(21,957.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 184.

CONSUMERS COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

ALBERT L. HATCH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IDAHO.

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1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the State of Idaho, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Idaho before you at the September term, 1909, thereof, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between Albert L. Hatch, plaintiff, and Consumers Company, Limited, a corporation, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under, said State on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the validity of a treaty or statute of or any authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the construction of a clause of the constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of said constitution, treaty, statute *of* or commission; a manifest error hath happened to the great damage of the said Consumers Company, Limited, as by its complaint appears.

We, being willing that error, if any hath been, should be corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you if judgment be therein given
2 that then, under your seal distinctly and openly you send the record and proceedings, aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this Writ so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof; that the record and proceedings, aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22d day of November, in the year of our Lord One Thousand Nine Hundred and Nine.

Done in the City of Boise, County of Ada, with the seal of the Circuit Court of the United States for the District of Idaho.

[Seal United States Circuit Court, Idaho.]

A. L. RICHARDSON,
Clerk of the Circuit Court of the United States, District of Idaho.

Allowed by Isaac N. Sullivan, Chief Justice of the Supreme Court of the State of Idaho.

ISAAC N. SULLIVAN,
Chief Justice.

2½ [Endorsed:] No. —. In the Supreme Court of the State of Idaho. Consumers Company, Ltd., Pl'ff in Error, v. Albert L. Hatch, Def't in Error. Writ of Error. Filed this 26 day of Nov., 1909. I. W. Hart, Clerk.

3 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Idaho, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case with all things concerning the same.

It witness whereof I hereunto subscribe my name and affix the seal of said supreme court, at Boise, Idaho, this 15th day of December, 1909.

[Seal of Supreme Court, State of Idaho.]

I. W. HART,
Clerk of the Supreme Court of the State of Idaho.

Costs of Suit.

Plaintiff's	costs	$84.10	paid by	A. L. Hatch.	
Defendant's	"	$4.00	"	"	Consumers Water Co.
Costs of Transcript		$80.00	"	"	" " "

I. W. HART,
Clerk Sup. Ct., Idaho.

4 [Endorsed:] In the Supreme Court of the State of Idaho. Albert L. Hatch, Plaintiff, vs. Consumers Co., Ltd., a corporation, Defendant. Motion, Notice of Hearing Motion, Affidavit for mandamus. Reed & Boughton, Attorneys for Plaintiff, Cœur d'Alene Idaho.

5 In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS CO., LTD., a Corporation, Defendant.

Notice of Hearing Motion.

To the Consumers Company, the above named defendant:

You are hereby notified that the above named plaintiff will on the Seventh day of April, 1909, at 10:00 o'clock in the forenoon,

or as soon thereafter as counsel can be heard, in the Court room in the city of Boise, state of Idaho, apply to the Supreme Court of the state of Idaho, for a peremptory writ of mandamus compelling you to make a tap in your water main in said city of Cœur d'Alene, Idaho, and connect the same with plaintiff's water pipe on the following described property, to-wit: Commencing at the northeast corner of lot Fourteen (14) Krotzer's Addition to Cœur d'Alene, Idaho, thence south along the east line of said lot Fourteen (14) Forty-Four (44) feet to a point of beginning, thence west One Hundred Fifty (150) feet parallel with the north line of said lot Fourteen (14), thence at right angles south Forty-Four (44) feet, thence east One Hundred Fifty (150) feet parallel with the north line of said lot fourteen (14) thence north along the east line of said lot Fourteen (14) Forty-Four (44) feet to the place of beginning.

And compelling you to furnish said plaintiff, Albert L. Hatch, with water for domestic purposes at said premises, upon payment to you by said plaintiff of the sum of One and 50/100 ($1.50) Dollars for the first month's water rent and for the further sum of One and 50/100 ($1.50) Dollars, or such other sum to which you may be entitled, for each succeeding month for water for domestic purposes at the above described premises.

6 This motion and application for writ of mandamus is based upon the affidavit of said Albert L. Hatch, the plaintiff herein, a copy of which affidavit is hereto attached.

Dated this twenty-seventh day of March, 1909.

REED & BOUGHTON,
Attorneys for Plaintiff, Cœur d'Alene, Idaho.

7 In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS CO., LTD., a Corporation, Defendant.

Motion.

Now comes the above named plaintiff, Albert L. Hatch, by his attorneys, Reed & Boughton, and moves the Court for the issuance of a peremptory writ of mandamus commanding said defendant, Consumers Company, to make a tap in its water main in the city of Cœur d'Alene, Idaho, and connect the same with plaintiff's water pipe on the following described property, to-wit: Commencing at the northeast corner of lot fourteen (14) Krotzer's Addition to Cœur d'Alene, Idaho, thence south along the east line of said lot fourteen (14) Forty Four (44) feet to a point of beginning, thence west One Hundred Fifty (150) feet parallel with the north line of said lot fourteen (14), thence at right angles south Forty-Four (44) feet, thence east One Hundred Fifty (150) feet parallel with the north line of said lot fourteen (14), thence north along the east line

of said lot fourteen (14) Forty-Four (44) feet to the place of beginning.

And further commanding said defendant to furnish said plaintiff, Albert L. Hatch, with water for domestic purposes at said premises upon payment to said defendant by said plaintiff of the sum of One and Fifty-one-hundredths ($1.50) Dollars for the first month's water rent, and the further sum of One and 50/100 ($1.50) Dollars monthly thereafter or such other sum as defendant shall be entitled according to the monthly rates fixed by said water commission for water for domestic purposes.

Dated this Seventh day of April, 1909.

REED & BOUGHTON,
Attorneys for Plaintiff, Cœur d'Alene, Idaho.

8 In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS CO., LTD., a Corporation, Defendant.

Affidavit for Mandamus.

STATE OF IDAHO,
County of Kootenai, ss:

Albert L. Hatch, being first duly sworn, deposes and says:

That he is the plaintiff named in the above entitled cause of action, and that he makes this affidavit for and in behalf of himself and all others similarly situated, who shall come in and make themselves parties to this action and defray a portion of the expenses of this suit; that he is the owner of the following described property, to-wit: Commencing at the northeast corner of lot Fourteen (14) Krotzer's Addition to Cœur d'Alene, Idaho, thence south along the east line of said lot Fourteen (14) Forty-four (44) feet to a point of beginning, thence west One Hundred Fifty (150) feet parallel with the north line of said lot Fourteen (14), thence at right angles south Forty-four (44) feet thence east One Hundred Fifty (150) feet parallel with the north line of said lot fourteen (14) thence north along the east line of said lot Fourteen (14) Forty-four (44) feet to the place of beginning. That said property is within the corporate limits of the city of Cœur d'Alene.

That the defendant is a corporation organized and existing under the laws of the state of Idaho, with its principal place of business in Cœur d'Alene, Idaho, and is organized for the purpose among other things, of supplying said village of Cœur d'Alene and the inhabitants thereof with water for domestic purposes and as such corporation is operating and existing under an ordinance from said village of Cœur d'Alene granting to said Consumers Company, its successors and assigns, the right to lay and maintain along
9 any and all of the streets and alleys of said village within the limits of said village as such limits now exist, or may

hereafter be established, water mains, pipes, laterals, connections, fittings and all other facilities for conveying, distributing and carrying water, and by the terms of said ordinance is entitled to charge and receive for water furnished for domestic purposes such rates as may be agreed upon by the inhabitants of said village and said Consumers Company, its successors and assigns, or such rates as may be fixed by the water commissioners provided by law. That the terms of said ordinance above mentioned were accepted by said Consumers Company by an instrument in writing, which written acceptance is in words and figures as follows, to-wit:

"To the Village of Cœur d'Alene, Kootenai County, Idaho, and to the Chairman of the Board of Trustees Thereof, Greeting:

The Consumers Company, a corporation organized under the laws of the State of Idaho, hereby accepts the benefits of Ordinance No. 93, granting the said Consumers Company a franchise for furnishing water to said village and of Ordinance No. 94 granting said Consumers Company a franchise for furnishing lights in said village, and agree- to the terms and conditions thereof.

Dated at Cœur d'Alene, Idaho, October 20th, 1903.

(Signed) AUGUST PAULSEN,
President.

Attest: B. O. GRAHAM, *Secretary.*"

That said acceptance was filed by James H. Harte, clerk of said village of Cœur d'Alene, on the 20th day of October, 1903; that the said defendant upon its acceptance of the terms of said Ordinance of said village of Cœur d'Alene, Idaho, as hereinbefore mentioned then became, and ever since has been, and now is a public service corporation in control of a public use, with the duty imposed upon it by law of furnishing all inhabitants of said village on the line of its water mains with water for domestic purposes upon demand therefor and payment of the regular monthly rate established for such use; that upon the acceptance of the terms of said Ordinance by said defendant, it then became, ever since has been and now is the duty of said defendant to furnish water for domestic purposes to all inhabitants of said village on the line of its said water mains upon demand therefor, and payment of the regular monthly rate established for such use, and without making a charge of Eight and 50/100 ($8.50) Dollars or any other sum for a tap in its said water mains, or without requiring a deposit of Fifteen ($15.00) Dollars in cash for a tap in its said water mains, the same to be refunded when the tap is taken out, less the actual cost of labor and the cost of one corporation cock; or without the deposit of Forty ($40.00) Dollars cash to apply on payment of water used from said tap; that said Consumers Company now is and has been for more than Five years last past, operating in said village of Cœur d'Alene under the terms of said Ordinance of said village and furnishing water to the inhabitants of said village for domestic purposes at monthly rates established by said Consumers Company, or fixed by commissioners appointed by law.

That on or about the 14th day of August, 1907, said commis-

sioners fixed the following rates for domestic purposes as follows: For two faucets alone, or supplying water to any two of the following: Sink, basin or lavatory, inside or outside of house, regardless of the number of rooms contained therein, per month, One and 50/100 ($1.50) Dollars; For each additional sink, basin or lavatory, twenty-five (25c.) cents; for each bath-tub, twenty-five (25c.) cents; for each toilet, per month, Fifty (50c.) cents; for horse or cow, per month, twenty-five (25c.) cents.

That some time ago, plaintiff began the construction of a dwelling house on the above described property for the purpose of making the same his home; that in the construction of said house, it is necessary to have water to mix the plaster and for other purposes; that plaintiff has no way of procuring water for such purposes and for his domestic use at said dwelling-house except from said Consumers Company; that he has laid a three-fourths-inch water
11 pipe on his said lot and extended the same out into the street six feet from the property line of said lot; that the water main of said Consumers Company is laid on Third Street in front of said property hereinbefore described, and that said defendant has an abundance of water unsold in its possession and under its control with which to supply plaintiff with water; that on the 22nd day of March, 1909, plaintiff went to the office of said Consumers Company in the village of Cœur d'Alene, Idaho, and tendered to said Consumers Company the sum of One and 50/100 ($1.50) Dollars for the first month's water rent at his said premises hereinbefore mentioned; that plaintiff at the time of tendering said sum of money to said Consumers Company as aforesaid, made application in writing for water at his said premises, and that said written application is in words and figures as follows, to-wit:

"CŒUR D'ALENE, IDAHO, *March* 20, 1909.

Consumers Company, Ltd., Cœur d'Alene, Idaho.

GENTLEMEN: I hereby request you to make one three-fourths-inch tap and extend the service pipe to the curb in front of the following described property, to-wit: Commencing at the northeast corner of lot Fourteen (14) Krotzer's Addition to Cœur d'Alene, Idaho, thence south along the east line of said lot Fourteen Forty-four (44) feet to a point of beginning, thence west One Hundred Fifty (150) feet parallel with the north line of said lot 14, thence at right angles south forty-four (44) feet, thence east One Hundred Fifty (150) feet parallel with the north line of said lot 14, thence north along the east line of said lot 14 forty-four (44) feet to the place of beginning.

I hereby agree to be governed by the reasonable rules and regulations of the company, or that may be established from time to time by the company, except, however, in so far as the rules and regulations require the payment of $8.50 cash for the above tap, or deposit $15.00 in cash, the same to be refunded when the tap is taken out, less the actual cost of labor and the cost of one corporation cock; or, the deposit of $40.00 cash, same to apply on payment of water used from said tap.

A. L. HATCH, *Consumer.*"

That said Consumers Company absolutely refused to furnish plaintiff with water at his said premises upon the payment of said One and Fifty-Hundredths ($1.50) Dollars and refused to accept said money, and at the same time requested and demanded
12 of said plaintiff that he sign an application, a copy of which is as follows:

"*Water Regulation No.* 1.

No. 801.

We will instal one Three-Fourths-Inch tap on any graded street within the city limits, Provided, that the location is within 50 feet of our mains, under any of the following conditions, namely: First, in consideration of $8.50 cash, paid in advance. Second, in consideration of a deposit of $15.00 cash, paid in advance, the same to be refunded when tap is taken out, less the actual cost of all labor and the cost of one corporation cock. Third, in consideration of $40.00 cash, paid in advance, same to apply on payment of water used from this tap.

CONSUMERS COMPANY, LTD.

CŒUR D'ALENE, IDAHO, —, 190–.

GENTLEMEN: I hereby request you to make one Three-Fourths inch tap and extend the service pipe to the curb in front of lot — block — in — Addition, Cœur d'Alene, Idaho, under the — condition above mentioned, and hereby agree to be governed by the rules and regulations that may be established from time to time by the company.

—— ——,
Consumer."

That plaintiff is erecting a five-room house on the property hereinbefore mentioned; that at the present time there is only one faucet on said property, and when said house is completed there will not be to exceed two faucets on said property for some time at least, and that One and 50/100 ($1.50) Dollars is the correct amount for plaintiff to pay for water at said premises.

That plaintiff is willing and expects to pay said defendant for water used for domestic purposes at said premises at the regular monthly rates fixed by said water commission. That said Consumers Company is now supplying the residents on Third Street in said village with water for domestic uses upon payment of the regular monthly rates established by said water commission; that plaintiff has no means of procuring water for domestic purposes at his said premises above mentioned, except from said Consumers Company; that plaintiff is now ready and willing to pay said defendant the regular monthly rate for water, and now brings said
13 money into Court and tenders the same to said defendant. That defendant refused and still does refuse to furnish plaintiff with water for domestic purposes at said premises

hereinbefore described, except upon the terms mentioned in the application blank of said defendant hereinbefore set forth.

That this affidavit is made for the purpose of procuring the issuance of a peremptory writ of mandamus directed to said Consumers Company, the defendant herein, commanding said defendant to make said tap in its water main and connect the same with the water pipe on plaintiff's said premises hereinbefore described; and to furnish water to said plaintiff for domestic purposes upon the payment of the regular monthly rate established by said water commission, for water for said domestic purposes and for damages, and such other relief as to this court shall seem meet.

This application is made direct to the Supreme Court for the reason that there is no District Judge in the County and District in which plaintiff's property is situated, before whom this application for a writ of mandamus could be heard, and plaintiff is informed and believes that a District Judge will not be elected or appointed in this District for several weeks, and plaintiff has no plain, speedy and adequate remedy in the ordinary course of law.

ALBERT L. HATCH.

Subscribed and sworn to before me this 27th day of March A. D., 1909.

[SEAL.] E. V. BOUGHTON,
Notary Public.

REED & BOUGHTON,
Attorneys for Plaintiff, Cœur d'Alene, Idaho.

14 STATE OF IDAHO,
County of Kootenai, ss:

M. C. Russell, being first duly sworn, deposes and says: That he is a white, male citizen of the United States and of the state of Idaho, over the age of twenty-one years, and not a party to the within entitled action; that he served a true copy of the within notice of hearing motion on the Consumers Company, the within named defendant, on the 27th day of March, 1909, by leaving said copy of said affidavit with J. W. Voellmeck, the Cashier of said Consumers Company, within the County of Kootenai.

(Signed) M. C. RUSSELL.

Subscribed and sworn to before me this 29th day of March, A. D., 1909.

(Signed) E. V. BOUGHTON,
Notary Public.

[Endorsed:] No. 1539. In the Supreme Court of the State of Idaho. Albert L. Hatch, plaintiff, vs. Consumers Co. Ltd., a Corporation, defendant. Copies of Notice of Hearing Motion, Motion, Affidavit for Mandamus. Filed this 7th day of April, 1909, at — o'clock, — M. I. W. Hart, Clerk of the Supreme Court. By —— ——, Deputy. Reed & Boughton, Attorneys for Plaintiff, Cœur d'Alene, Idaho.

15 In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS COMPANY, LIMITED, a Corporation, Defendant.

Answer.

Comes now the above named defendant and for answer to the affidavit and petition for mandamus of the above named plaintiff, denies, admits and alleges as follows:

I.

Denies that the lands and premises described in the affidavit of plaintiff on file herein as follows, to wit:

Commencing at the northeast corner of lot Fourteen (14), Krotzer's Addition to Cœur d'Alene, Idaho, thence south along the east line of said lot Fourteen (14) forty-four (44) feet to a point of beginning, thence west one hundred fifty (150) feet parallel with the north line of said lot Fourteen (14), thence at right angles south forty-four (44) feet, thence east one hundred fifty (150) feet parallel with the north line of said lot Fourteen (14), thence north along the east line of said lot Fourteen (14) forty-four (44) feet to the place of beginning, are within the corporate limits of the said City of Cœur d'Alene.

II.

Admits that defendant is a corporation organized under the laws of the State of Idaho, with its principal place of business in said City of Cœur d'Alene, and that it is organized for the pur-
16 pose among other things of supplying the said City of Cœur d'Alene and the inhabitants thereof with water for domestic purposes. Admits that it is operating under an ordinance from the said City of Cœur d'Alene, a true and correct copy of which said ordinance is hereunto annexed, marked "Exhibit A," hereby referred to and made a part of this answer. Admits that the terms of said ordinance were accepted by defendant by an instrument in writing, a true and correct copy of which is set out on page two of the affidavit of plaintiff, Albert L. Hatch, heretofore filed herein. Admits that it is a public service corporation. Denies that it is in control of a public use and alleges the fact to be that the right to supply water to the inhabitants of the said City of Cœur d'Alene is a franchise which the said defendant has procured from the said City of Cœur d'Alene, that it is not exclusive and under the laws of the State of Idaho could not be made exclusive. Denies that defendant has imposed upon it by law the duty of furnishing all the inhabitants of said City on the line of its water mains with water for domestic purposes, upon demand therefor and the payment of the regular monthly rate established for such use. Denies that upon the acceptance of the terms of said ordinance by said defendant, or

at any other time or at all, it became, ever since has been or now is the duty of said defendant to furnish water for domestic purposes to all the inhabitants of the said City of Cœur d'Alene on the lines of its water mains, upon demand therefor and payment of the regular monthly rate established for such use and without making
17 a charge of eight dollars and fifty cents ($8.50), or any other sum, for a tap in its said water mains, or without requiring a deposit of fifteen dollars ($15.00) in cash for a tap in its said water mains, with the condition that the same shall be refunded when the tap is taken out, less the actual cost of labor and the cost of one corporation cock, or without the deposit of forty dollars ($40.00) cash to apply on payment of water used from said tap.

III.

Defendant denies that upon the acceptance of the terms of said ordinance, referred to in plaintiff's said affidavit and in this answer, a copy of which ordinance is hereunto annexed and hereinbefore referred to, it became or since said date has become or now is the duty of said defendant to furnish water for domestic purposes to all or any of the inhabitants of the said City of Cœur d'Alene, whether the said inhabitants lived along the line of its water mains or elsewhere, except upon a full compliance by said inhabitants, and by each one of them who may demand water service, with all of the provisions of the findings of the water commissioners, made on the 14th day of August A. D. 1907, by commissioners duly appointed therefor, a true and correct copy of which said findings is hereunto annexed, marked "Exhibit B," hereby referred to and made a part of this answer.

IV.

As to whether or not some time ago or at any time plaintiff began the construction of a dwelling house on the property described in his affidavit hereinbefore mentioned and on file herein, for the purpose of making the same his home, or as to whether or not in
18 the construction of the said house it is necessary to have water to mix the plaster or for other purposes, defendant has not sufficient knowledge or belief to enable it to answer and it therefore denies the said allegations and each and all thereof and every part thereof. Defendant denies that plaintiff has no way *to* procuring water for such purposes or for domestic use at such dwelling house (in case the same shall ever be constructed) except from the said defendant, Consumers Company, Limited. Defendant admits that its water main is laid on what is known as Third Street, in front of the property described in plaintiff's said affidavit, but denies that it has an abundance of unsold water under its control, and alleges the fact to be that during a large portion of the year it requires all of the water under its control to supply its present customers. Admits that on the 22nd day of March A. D. 1909, plaintiff came to defendant's office in the said City of Cœur d'Alene and tendered the sum of one dollar and fifty cents ($1.50) for his first month's water rent at the premises described in his said affidavit, and also admits that

plaintiff filed with said defendant an instrument in writing requesting water service, which said instrument in writing is set out in full on page four of plaintiff's said affidavit heretofore filed herein.

V.

Defendant admits that, for the reasons hereinafter stated, it refused to furnish plaintiff with water at the said premises, upon the payment of the said sum of one dollar and fifty cents ($1.50) and refused to accept said money and requested plaintiff to sign an application in writing, a copy of which is set out on page five of plaintiff's said affidavit.

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VI.

As to whether or not plaintiff is erecting a five-room house on the property mentioned in his said affidavit or as to whether or not there is only one faucet on said property or as to whether or not when the said house is completed there will not be to exceed two faucets on said property, defendant has not sufficient knowledge or belief to enable it to answer and it therefore denies the said allegations and each and all thereof and every part thereof; and defendant denies that one dollar and fifty cents ($1.50) is the correct amount for plaintiff to pay for water at said premises. As to whether or not plaintiff is willing and expects to pay said defendant for water used for domestic purposes at said premises, at the regular monthly rates fixed by said water commissioners or in any other manner or at all, defendant has not sufficient knowledge or belief to enable it to answer and it therefore denies the said allegations and each and all thereof and every part thereof. Defendant admits that it is now supplying residents of the said pretended Third Street water for domestic purposes, but denies that that part of said pretended Third Street lying in front of and adjacent to the property of the said plaintiff is within the said City of Cœur d'Alene. Denies that plaintiff has no means of procuring water except from said defendant. Denies that said plaintiff is now ready and willing to pay to defendant the regular monthly rate for water and denies that he now brings or has brought the said money into Court or that he has tendered to defendant any sufficient amount of money to justify or require the said defendant to furnish to him water at the said premises for one month or for any other time or at all.

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VII.

Defendant denies that it refused to furnish plaintiff with water for domestic purposes at the premises hereinbefore described, excepting upon the terms mentioned in the application blank of said defendant, referred to and set forth in plaintiff's said affidavit, and alleges the fact to be that on the 1st day of April A. D. 1909, it made to the said plaintiff an offer in writing in words and figures following, to wit:

"CŒUR D'ALENE, IDAHO, *April 1st*, '09.

"Mr. A. L. Hatch, Cœur d'Alene, Idaho.

DEAR SIR: In reply to your application made on March 20, 1909, requesting the Consumers Company to tap its main and extend your service pipe to the curb in front of the following described property: Commencing at the northeast corner of lot 14, Krotzer's Addition to Cœur d'Alene, Idaho, thence south along the east line of said lot 14 forty-four feet to a point of beginning, thence west 150 feet parallel with the north line of said lot 14, thence at right angles south 44 feet, thence east 150 feet, parallel with the north line of said lot 14, thence north along the east line of said lot 14, forty-four feet to the place of beginning; this is to inform you that the Consumers Company will make a tap and extend a service pipe in front of said property as requested providing you will first pay all the water rent which you now owe the Company, and further, if you will enter into an agreement with the Company to take $18.00 worth of water at said premises, and agree to make said amount and all water rentals at said premises a lien upon the land above described, under these conditions, if you care to comply with them, the Company will make the tap requested free of charge.

Yours truly,

CONSUMERS COMPANY, LTD.
By T. C. HAHN."

That ever since said 1st day of April A. D. 1909, it has been and now is ready, willing and able to supply water to the said plaintiff at the said premises upon the terms and conditions mentioned in said offer in writing.

21 Further answering said affidavit and petition, defendant respectfully shows to this Honorable Court:

I.

That the said defendant is now and at all the times hereinafter mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of Idaho, with its principal place of business at Cœur d'Alene, Idaho, that article II of defendant's articles of incorporation states the purposes for which it was organized and is in words and figures as follows, to wit:

"The purposes for which said corporation is formed are: to acquire, construct, own, enlarge, maintain and operate water works, and to supply municipalities, corporations and individuals with water and water power; and to acquire, erect, maintain, construct and enlarge all necessary dams, buildings, plant, machinery, fixtures and apparatus of every sort for supplying municipalities, corporations and individuals with water and water power for all purposes and to carry on a business incidental thereto, including the purpose of acquiring, constructing, enlarging, maintaining and operating water works, pumping stations, and a system of water supply, and the dams, reservoirs, pumping stations, and conduits thereto appertaining, in Kootenai County, Idaho, and elsewhere in said State of Idaho and State of Washington, and supplying the City of Cœur d'Alene,

in said State of Idaho, and territory adjacent thereto, and the citizens and inhabitants thereof, and the corporations located and transacting business therein, with water and water power for domestic, mechanical, public and fire, and all other purposes, with power to acquire, hold, lease and convey real and personal estate suitable for the business of the corporation; and to acquire, own, hold possess and convey franchises and grants from State or municipal authorities, for supplying cities, villages and towns, or either, and the inhabitants thereof, with water for all purposes, and the carrying on the business of operating water works, and to acquire and to own stock and bonds of other corporations organized for like purposes; and to acquire, own, hold and possess all such other personal property as may be suitable or convenient for the business of the Company, and with the right to issue bonds and secure the same by mortgage of the franchises, rights, contracts and property of the corporation, real and personal, and to issue common capital stock, and to do all and everything necessary, suitable or proper for the accomplishment of
22 any of the purposes or the attainment of any of the objects heretofore enumerated, which shall at any time appear for the benefit of the corporation; and in general to carry on any other business, whether manufacturing or otherwise, which may seem to the corporation capable of being conveniently carried on in connection with the above, or calculated to enchance the value of or render profitable any of the corporation's property or rights. Also,

To purchase, acquire, hold, lease, manage, control and operate, and to sell, lease and dispose of, to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions, as to this corporation may seem proper, water, water rights, power, privileges and appropriations, for mining, milling, agricultural, domestic and other uses and purposes; and to develop, control, generally deal in and dispose of to such person or persons, corporation or corporations, and for such price or prices, and on such terms and conditions, as to this corporation may seem proper, electrical and other power, for the generation, distribution and supply of electricity for light, heat and power, and for any other uses and purposes to which the same may be adopted; and to acquire, construct, equip, lease, maintain and operate, plants for the generation, distribution and sale of gas, for illuminating, heat, and all other uses and purposes to which the same may be adapted."

II.

That on the 19th day of October A. D. 1903, the said City of Cœur d'Alene, by an ordinance duly passed and approved by said City of Cœur d'Alene, granted to said defendant a franchise authorizing it to lay water pipes in the streets and alleys of said City of Cœur d'Alene, a true and correct copy of which said ordinance is hereunto annexed, marked "Exhibit A" hereby referred to and made a part of this affirmative answer, being the same ordinance hereinbefore in this answer referred to; that the said ordinance has never been repealed, abrogated or modified and that the same is now in full force and effect.

III.

That on the 14th day of August A. D. 1907, and prior to the commencement of this proceeding, the water rates to be changed for domestic purposes in the said City of Cœur d'Alene and the
23 rate to be charged by the defendant corporation, for supplying water to the inhabitants of said City of Cœur d'Alene, including the rate to be charged for making service connections, were established and determined by commissioners appointed, two by the said City of Cœur d'Alene and two by the Consumers Company, Limited, the defendant herein, in the manner provided by law; that said commission established and determined the rates to be charged by the said Consumers Company, Limited, for water furnished to the inhabitants of said City of Cœur d'Alene and for putting in service connections, and that the rates so established by said commission were and are included in the report of said commission, and that a true and correct copy of said report is hereunto annexed, marked "Exhibit B," hereby referred to and made a part of this answer, being the same report hereinbefore referred to in this answer as "Exhibit B." That the said report has never been abrogated, annulled, changed or modified and that the same is now in full force and effect, and that this defendant has at all times since said 1st day of October A. D. 1907, complied and conformed to the rates and charges established by said commission. And defendant further alleges that the said commissioners, in arriving at the conclusions set out in said report and in fixing the rates therein established to be charged for supplying water for domestic purposes and for all other purposes to the inhabitants of the said City of Cœur d'Alene and to the said City of Cœur d'Alene, considered every part of the said report and especially that part therein providing that the price for making water service connections should be for one-half inch pipe seven dollars ($7.00), for three-fourths inch pipe eight dol-
24 lars and fifty cents ($8.50) and for one inch pipe ten dollars ($10.00); and defendant is informed and believes and therefore alleges the fact to be that the said commissioners would not have fixed the rate to be charged for supplying water for domestic purposes at the rates established in said report, or at a price as low as the rates fixed in said report, or at any rate lower than the minimum charge of two dollars and fifty cents ($2.50) per month for residence service, except upon consideration that the said defendant should be permitted and allowed to charge and receive from the inhabitants of said City of Cœur d'Alene the rate so fixed by said commissioners for making service connections.

IV.

Defendant further alleges that from the 1st day of June A. D. 1907, up to on or about the 1st day of January A. D. 1909, the said plaintiff resided on what is known as Lot No. 1 of Block 2 of Varnum's Addition to the said City of Cœur d'Alene, which said Lot No. 1 is situated at the corner of First and Summit Streets in said City; that the said Summit Street has never been graded, and

defendant is informed and believes and therefore alleges the fact to be that the grade thereof has never been established by the officers of said City of Cœur d'Alene; that that part of said First Street extending through Varnum's Addition aforesaid (of which said Lot No. 1 of Block 2 forms a part) has never been graded, and that the grade thereof, as defendant is informed and believes and therefore alleges the fact to be, has never been established by the officers of the said City of Cœur d'Alene; that that part of said First
25 Street which extends through said Varnum's Addition, is extremely uneven and irregular and is crossed by a deep gulch; that it would cost said defendant approximately the sum of one hundred and fifty dollars ($150.00) to extend its main from its nearest approach on said First Street to and in front of said Lot No. 1 of Block 2; that the said extension would extend down across the said deep gulch and would be of no permanent value whatever to the said defendant; that the said Block 2 is in a remote part of the district included within the pretended limits of the said City of Cœur d'Alene and that there are not to exceed two or three residences in the entire block; that the said residences are inhabited but a small portion of the time and that water rates could not be permanently collected even if the water mains of the defendant company extended throughout the entire block; that sufficient water rates could not be collected from the residents of said block to pay the actual cost of supplying water to them; that during the time said plaintiff resided on said Lot No. 1, he used water supplied by this defendant and carried the same from neighbors living in the vicinity of said Lot No. 1 who were supplied with water by this defendant; that the said plaintiff used water supplied by this defendant for a period of seventeen months, at the time that he occupied said premises; that he never paid to said defendant any amount whatever upon the said account for water services, save and except the sum of one dollar and fifty cents ($1.50); that there is now due, owing and unpaid from the said plaintiff to the said defendant for water used by the said plaintiff at said premises the sum of twenty-three dollars and fifty cents ($23.50); that defendant has frequently demanded of plaintiff that he pay the same, but that said plaintiff has constantly refused and still refuses to pay.

26 V.

Defendant further alleges that during the months of January, February and March, 1909, the said plaintiff resided on what is known as Third Street, which he pretends and asserts is within the said City of Cœur d'Alene, at a place in what is pretended by plaintiff to be Krotzer's Addition to the said City of Cœur d'Alene; that during said months of January, February and March, 1909, said plaintiff carried water, supplied by this defendant, from the faucets of neighbors residing in the vicinity of his said residence, and used the same for domestic purposes, and that the said plaintiff is indebted to the said defendant in the sum of four dollars and fifty cents ($4.50) for the water so used during the said months of January, February and March, 1909; that defendant has frequently re-

quested plaintiff to pay the same but that plaintiff has not paid the said sum of four dollars and fifty cents ($4.50) or any part thereof, and that he is now indebted to the said defendant in the sum of twenty-eight dollars ($28.00) for water so used by him, which was supplied by the said defendant in the manner above stated, all of which said amount he has hitherto refused and still continues to refuse to pay.

VI.

Defendant further alleges that for the purpose of avoiding difficulty with the above named plaintiff, without conceding that it was or is under obligation so to do, on the 1st day of April A. D. 1909, offered to the said plaintiff to put in service connections at the property described in his said affidavit on file herein, upon the terms and conditions set out in its offer in writing, heretofore in paragraph VII of defendant's answer to plaintiff's said affidavit and petition set out in full, which said paragraph is hereby referred to.

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VII.

And defendant alleges that the actual cost and expense which has heretofore been and in the future will be necessarily incurred by this defendant in making water connections for the inhabitants of the said City of Cœur d'Alene, upon the streets where it now has its water mains established is, on an average fully as much as the rates established by the commission hereinbefore referred to to be made for such services. And defendant further alleges that the profits which it derives out of furnishing and selling water to the residents and inhabitants of the said City of Cœur d'Alene, for residence properties which are supplied by the terms fixed by the said commissioners, does not exceed the sum of four dollars and fifty cents ($4.50) per annum, and that the cost of making service connections upon the streets where the water mains of defendant are already laid exceed the monthly rental offered by the said plaintiff to said defendant by the full sum of seven dollars ($7.00), and defendant alleges that if it should be required to make service connections at the point demanded by the said plaintiff upon the terms prayed for in his said petition, that it will result in a positive financial loss to the said defendant.

VIII.

Defendant further alleges that the said City of Cœur d'Alene pretends and assumes to exercise governmental jurisdiction over an area which it pretends and assumes, gives out and publishes is within its corporate limits, which is approximately two and one-half miles by three miles in extent; that large and extensive portions of the said area are not inhabited at all and that other large portions are very sparsely settled and inhabited and that houses have been built on large portions of the same only at rare intervals and at long distances apart; that the water mains which have been hitherto laid by this defendant corporation cover those portions of the said City of Cœur d'Alene within its said pretended limits, which

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are inhabited by the largest portion of the residents and inhabitants of said City and of said area and that its water mains also extend into and through large districts that are sparsely settled and into those that are not settled at all. And defendant alleges the fact to be that if it should be required to extend its water mains so as to furnish water to all of the outlying portions of said area, which said City of Cœur d'Alene pretends and gives out and publishes is within its corporate limits, it would be required to expend such vast sums of money that it would be impossible for it to successfully conduct its business and that such requirement would in effect operate as a confiscation of the property of this defendant corporation, and that if it should be required so to extend its system, it would cause the insolvency of this defendant and result in its practical bankruptcy.

IX.

And defendant further alleges that it is informed and believes and therefore states the fact to be, that the premises described in plaintiff's said petition as a part of Krotzer's Addition to the said City of Cœur d'Alene, and that entire tract of ground known as Krotzer's Addition, is not a part of said City of Cœur d'Alene and that
29 it is not within the corporate limits of said City of Cœur d'Alene.

X.

Defendant further alleges that the driveway which is known as Third street and extends in front of the property described in plaintiff's said affidavit is not graded and that defendant is informed and believes and therefore alleges the fact to be that the officers of said City of Cœur d'Alene have never fixed or pretended to fix the grade of said Third Street and that that portion thereof which extends in front of the property described in plaintiff's said affidavit is not within the corporate limits of the said City of Cœur d'Alene.

XI.

Defendant further alleges that many of the so-called additions to the said City of Cœur d'Alene are vacant properties non-contiguous to the said City of Cœur d'Alene, which have been platted by real estate promoters for purposes of sale and speculation and that the owners and promoters of the said pretended additions have frequently demanded of this defendant that it extend its water mains to the said pretended additions and that the said demands were made, as this defendant has reason to believe and does believe, for the purpose of securing water service and in this manner enhancing the value of the lands within the said pretended additions and enabling the owners and promoters thereof to derive large profits by selling the same at speculative prices; that if this defendant should be required to extend its mains to the said several additions, it would result in great loss, injury and bankruptcy of this defendant and and would not promote any public good.

30 Wherefore, Defendant prays that the application and petition of plaintiff for a writ of mandate be denied and that this defendant may have and receive of and from said plaintiff its costs and disbursements herein expended.

ROBERT H. ELDER,
GRAY & KNIGHT,
Attorneys for Defendant.

Residence and P. O. Address: Cœur d'Alene, Idaho.

STATE OF IDAHO,
County of Kootenai, ss:

George Harding being first duly sworn deposes and says: That he is manager of the Consumers Company, Limited, a corporation, the defendant named in the foregoing answer and that he makes this verification for and on behalf of said defendant; that he has heard read the foregoing and annexed answer, knows the contents thereof and that the same is true to his own knowledge, except as to the matters and things therein stated upon information and belief and as to those things that he believes the same to be true.

GEORGE HARDING.

Subscribed and sworn to before me this 5th day of April, A. D. 1909.

[SEAL.] ROGER G. WEARNE,
Notary Public, Kootenai County, State of Idaho.

31 (EXHIBIT "A.")

Ordinance No. 93.

An ordinance granting to the Consumers Company, its successors or assigns, the right to furnish water to the inhabitants of the village of Cœur d'Alene, Kootenai County, Idaho, for domestic and other purposes, providing said village of Cœur d'Alene with fire protection, and granting said Consumers Company, its successors and assigns, the right to lay and maintain mains, pipes, laterals, connections, fittings, and all other facilities for conveying, distributing and carrying water in the streets and alleys of said village.

Be it ordained, by the Chairman and Board of Trustees of the village of Cœur d'Alene, in Kootenai County, Idaho:

SECTION 1. That the right to supply the village of Cœur d'Alene, in Kootenai County, Idaho, and the inhabitants thereof, with water for domestic and all other purposes, be and the same is hereby granted to the Consumers Company, a corporation created under and by virtue of the laws of the State of Idaho, its successors and assigns, for a period of fifty (50) years from the date of the passage and approval of this ordinance.

SECTION 2. That said Consumers Company, its successors and assigns, are hereby granted the right to lay and maintain along any and all of the streets and alleys of said village, within the limits of said village, as such limits now exist or may hereafter be extended, water mains, pipes, laterals, connections, fittings, and all other facilities for conveying, distributing and carrying water and also pipes, tiling and other facilities for carrying off and discharging water from water motors, water wheels and other devices
32 wherein water may be used for power or other purposes.

SECTION 3. Said Consumers Company, its successors and assigns, shall be entitled to charge and receive for water furnished for domestic purposes such rates as may be agreed by the inhabitants of said village and said Consumers Company, or its successors or assigns, or such rates as may be fixed by the Water Commission provided by law; and to charge and receive for water used for power and purposes other than domestic uses, such rates as such Consumers Company may establish.

SECTION 4. Said Consumers Company, its successors and assigns, shall furnish water to said village of Cœur d'Alene for street sprinkling purposes, in reasonable quantities, without charge therefor; and shall at all times, during the operation of said water system, furnish said village, in case of fire or other great necessity, free of charge, water to the full extent of its or their means.

SECTION 5. Said Consumers Company, its successors and assigns, shall at its or their expense, install and maintain suitable tees for hydrant connections at such alternate street crossings as may be intersected by mains of four (4) inches diameter, or over, which may be designated by the Trustees of said village, and shall, at the expense of said village, and without unreasonable delay, place, connect and maintain at such points such hydrants as may be desired by said village.

SECTION 6. All pipes, mains and other facilities for conveying and distributing water, shall be laid at least twelve (12) inches below the established grades of streets and alleys, and upon either side of such streets and alleys as may be selected by said Consumers Company, its successors or assigns; provided, that no such
33 mains, pipes or other facilities shall be laid closer to the center line (longitudinally) of any street than a distance equal to one sixth (1/6) of the width of such street; that the grades of streets and alleys shall be established by the village whenever said company, its successors and assigns, desire to lay its mains, pipes or other facilities thereon.

SECTION 7. Said Consumers Company, its successors or assigns, shall construct and equip a suitable pumping station at such point as it or they may select (either on lot four (4) or five (5) in section twenty four (24) Township fifty (50) North, Range Four (4), W. B. M., which pumping station shall be supplied with a pump or pumps of suitable capacity to raise 500,000 gallons of water two hundred feet (200 ft.) in 24 hours, and shall be connected with a reservoir and distributing system herein referred to in the manner in this ordinance specified.

SECTION 8. Said Consumers Company, its successors or assigns, shall construct at a suitable point within two (2) miles of the village of Cœur d'Alene, Idaho, a reservoir of at least 300,000 gallons capacity, which shall be located at an elevation of at least 180 feet above the level of Sherman Street at its intersection by Fourth Street in said Village of Cœur d'Alene, which reservoir shall be connected with said pumping station and with the mains in said village by a pipe line of at least ten (10) inches in diameter.

SECTION 9. That said pumping station and reservoir, and the pipe line connecting the same, shall be so constructed and maintained that water may be pumped directly into the mains leading into and throughout said village without passing through such reservoir, in order that said reservoir may be cleaned or repaired without interfering with the water supply of said village.

34 SECTION 10. That said Consumers Company, its successors or assigns shall install and place in operation a system of pipes for distribution of water in said village, consisting of mains and laterals of diameters not less than those hereinafter specified, and laid substantially as follows:

A ten (10) inch main leading from said pumping station into the village of Cœur d'Alene by such route and along such streets or alleys as may be selected by said Consumers Company, its successors or assigns, to the intersection of Seventh Street by Sherman street in said village; thence north along Sherman street to the village limits; an eight (8) inch main connecting with said ten (10) inch main at the intersection of Sherman and Seventh streets, extending west along said Sherman street to Second street; thence north on Second street to Cœur d'Alene Street, thence west on Cœur d'Alene street to First street, thence north along First street to the present limit of said village; said ten (10) inch lateral extending along Seventh street, and said eight (8) inch main extending along Second and First street-, shall be connected by four (4) inch laterals laid on Lakeside Avenue, Cœur d'Alene street, Lakeview street, Garden street, and Wallace and Foster streets; also a main four (4) inches in diameter connecting with said eight (8) inch main at the intersection of Sherman and Fourth streets, extending north along Fourth street to the intersection of Fourth street and Foster street; also a four (4) inch main connecting with said eight (8) inch main at Fourth and Sherman streets, extending south along Fourth street to Front street, thence east along Front street to its intersection and connection with the ten (10) inch main leading from said pumping station to said distributing system; also a four (4) inch main connecting with said last described four (4) inch main at Front and Fifth streets, extending south along Fifth street to Mullan Avenue thence east on Mullan Avenue to its

35 intersection and connection with said ten (10) inch main leading from said pumping station to said distributing system.

Provided, that mains and laterals to be laid on Lakeview and Wallace streets need not be laid by said company, its successors or assigns, until said street shall have been graded by said village;

said Consumers Company, its successors or assigns, may extend said distributing system of mains, pipes, laterals and other facilities along any of the streets or alleys of said village, whether such street or alley shall have been graded at the time of such extension or not, but shall not be required to extend the same along any ungraded street or alley.

SECTION 11. Said Consumers Company, its successors or assigns, may bond, or otherwise hypothecate such water system and the franchise hereby granted, for such purposes as it or they may deem proper.

SECTION 12. Within sixty (60) days after the expiration of twenty-five (25) years from the date hereof, said village of Cœur d'Alene shall have the right to purchase from said Consumers Company, its successors or assigns, such water system, pumping station and reservoir, at such price as may be determined reasonable by arbitrators, two of whom shall be appointed by the trustees or council of said village, and two *of* said Consumers Company, its successors or assigns, and if such persons so appointed cannot agree upon a reasonable basis for the purchase and sale of said system, pumping station and reservoir, they shall select a fifth arbitrator, who shall not be a resident or property owner of said village of Cœur d'Alene, and if they are unable to agree upon such fifth arbitrator, the District Judge of Kootenai County, Idaho, shall name such fifth arbitrator, who shall not be a resident or property owner in said village; provided, however, that said Consumers Company,
36 its successors or assigns, shall not be required to accept therefor a sum less than such sum that would, at eight (8) per cent interest, earn a revenue equal to the average annual net earnings of said water system for the five years immediately preceding such sale.

SECTION 13. Said Consumers Company, its successors or assigns, shall within ten days after the passage and approval of this ordinance file with the clerk of said village its written acceptance of the terms and conditions hereof, and shall also file with said clerk a bond in the penal sum of Five Thousand dollars ($5000.00) with good and sufficient surety to be approved by the Chairman of the Board of Trustees of said Village, conditioned upon the completion of said pumping and distributing system within six (6) months from the date hereof, unavoidable delays and delays from restraining orders excepted, and the continuation and diligent prosecution of the work upon said reservoir now in the course of construction until the completion thereof.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Passed its first reading at a special meeting of the Board of Trustees, called for that purpose, held October 19th, 1903.

Passed its second reading under suspension of the rules at a special meeting of the Board of Trustees, called for that purpose, held October 19th, 1903.

Passed its third and final reading, and duly enacted as an ordinance of the Village of Cœur d'Alene, Idaho, at a special meeting of the Board of Trustees, called for that purpose, held October 19th, 1903.

37 Approved October 19th, 1903.

A. V. CHAMBERLIN,
Chirman Board of Trustees.

Attest: JAMES H. HARTE,
Village Clerk.

Published in the Cœur d'Alene Press, a weekly newspaper, published in the village of Cœur d'Alene, Idaho, in its regular issue, dated October 24th, 1903.

JAMES H. HARTE,
Village Clerk.

38 "CŒUR D'ALENE, IDAHO, WEDNESDAY, *Aug.* 14, 1907.

The persons heretofore duly selected by the city of Cœur d'Alene, and the Consumers' Company, a corporation, as the commission to fix rates for the use of water within the corporation limits of said city of Cœur d'Alene, met at the office of R. T. Morgan, and the following proceedings were had:

Upon motion duly seconded, R. T. Morgan was selected as chairman of said commission, and Henry Bodler as secretary. Thereupon the commission so organized proceeded to consider the question of rates for said city of Cœur d'Alene, Alexander Main appeared for the city of Cœur d'Alene, and George Harding for the Consumers Company. Statements were made by the representatives of the city and of the Company, and documentary evidence was introduced, showing the rates for the towns of Idaho, Oregon, Washington and Montana, and after due consideration of the oral statements and the documentary evidence, the commission determined upon the following schedule as the rates to be charged by the Consumers Company for the use of water by the users thereof within the corporate limits of the city of Cœur d'Alene, Kootenai County, State of Idaho, namely:

Residence Rates.

For two faucets alone, or supplying water to any two of following: sink, basin or lavatory, inside or outside of house regardless of the number of rooms contained therein, per month	$1.50
All persons carrying, or in any way obtaining water from a neighbor's faucet, per month	1.50
For each additional sink, basin or lavatory	.25
" " bathtub	.25
" " toilet, per month	.50
" " cow or horse, per month	.25

39 *Sprinkling Rates.*

For one 50 ft. x 110 ft. Lot or fraction thereof, provided that the water be used during the hours specified by the Consumers Company, Ltd., per season $4.00
For each additional Lot or fraction of lot 3.00

Business Rates.

Class A.

Including one faucet with one sink, lavatory or basin, per month $1.50

Dry goods stores.
Clothing stores.
Harness shops.
Tea stores.
Cigar stores.
Real estate offices.
Tailor shops.
Book stores.
Banks.
Shoe stores.
Fruit stands.
Furniture stores.
Upholstering establishments.
Carpenter shops.
Offices.
General merchandise stores.
Second hand stores.
Music stores.
Bazaars.

Extra for each toilet, per month ..... .50
" " " self closing urinal per mo ..... .50
" " " constant flowing urinal " 2.00
" " " sill cock faucet for washing down front or side walk, per mo ..... .25
40 Extra for each additional sink, basin or lavatory, per month ..... .25
" " " steam or hot water plant when in use, per month 1.00

Class B.

Including one faucet with lavatory, sink or basin, per month. 1.50
Fraternal Halls.
Dance halls, etc.
Business blocks.
Extra for each additional basin, sink or lavatory ..... .50
Extra for each toilet, per month 1.00
" " " self closing urinal, per mo ..... .50
" " " constant flowing urinal, per mo 2.00
" " " steam or hot water heating system when used, per mo. 1.00
" " " sill cock or faucet, per mo ..... .25

Class C.

Including one faucet with lavatory, sink or basin, per month.	1.75
Hardware stores.	
Grocery stores.	
Printing offices.	
Plumbing shops.	
Billiard halls.	
Blacksmith shops.	
Machine shops.	
Meat markets.	
Extra for each additional sink, lavatory or basin, per month.	.50
" " " toilet, per month	.50
" " " self closing urinal, per mo	.50
" " " constant flowing urinal, per mo	2.00
" " " sill cook or faucet, per mo	.25
" " " vegetable sprinkler, season	2.00
" " " steam or hot water heating system	1.00

41 Class D.

Including one faucet with sink, basin or lavatory, per month.	2.00
Drug stores.	
Candy factories.	
Photograph galleries.	
Delica-ssen stores.	
Bakeries.	
Undertaking establishments.	
Extra for each additional sink, lavatory or basin per month.	.50
" " " toilet, per month	.50
" " " self closing urinal, per month	.50
" " " constant flowing urinal, per month	2.00
" " " sill cook or faucet, per month	.25
" " " soda fountain jet, per month	1.00

Class E.

Including one faucet with lavatory, sink, or basin, and one chair, per month	2.00
Barber shops.	
Extra for each additional chair, per month	.50
" " " additional basin, sink or lavatory, per mo.	.50
" " " toilet, per month	.75
" " " self closing urinal, per month	.50
" " " constant flowing urinal, per month	2.00
" " " sill cook or faucet, per month	.25
" " " Bath tubs per month	1.00

Class F.

Including faucet with any two of the following: lavatory, sink or basin and ten rooms or less per month..... 2.00

Hotels.
Lodging houses.

	Extra for each additional room.....	.10c.
	" " " bath	.50c.
	" " " toilet	1.00
42	Extra for each additional sink, lavatory or basin....	.25
	Extra for each constant flowing urinal.....	2.00
Extra for each sill cock.....		.25
Extra for each heating plant when used.....		2.00

Class G.

Including one faucet with lavatory, sink or basin..... $2.50

Saloons—Bars.—

Extra for each additional lavatory, sink or basin.....		.50
" " "	toilet	1.50
" " "	self closing urinal.....	.50
" " "	constant flowing urinal.....	2.00
" " "	sill cock	.25

Class H.

Including faucet with lavatory, sink or basin..... $3.00

Restaurants—

Additional sink, lavatory or basin.....	2.25
Each toilet	.50
Each sill cock.....	.25
Each fountain	.50

Class I.

Special rates by agreement or by meter—

Laundries.
Livery stables.
Cold storage plants.
Ice plants.
School buildings.
Bottling works.
Breweries.
Motors.
Hydraulic Elevators.
Steam engines.
Irrigation.

43 Sewer-ate—Gas or gasoline engines.—

The company or any consumer may demand the use of a meter for the measurement of water, but whoever makes the demand must pay all costs of installation, and the consumer must in either case pay a meter rental of twenty-five cents per month, or make a deposit at the office of the company in the amount of twelve dollars to cover the cost of meter. The regular rate of the consumer will not be charged where a meter is used, and the meter rates will be as follows:

10,000 gallons or less per month							30¢	per	thousand
10,000 to	20,000	gallons or less per month					25¢	"	"
20,000 to	50,000	"	"	"	"	"	20¢	"	"
50,000 to	100,000	"	"	"	"	"	15¢	"	"
100,000 to	200,000	"	"	"	"	"	12½¢	"	"
200,000 to	300,000	"	"	"	"	"	12¼¢	"	"
300,000 to	400,000	"	"	"	"	"	12¢	"	"
400,000 to	500,000	"	"	"	"	"	11¾¢	"	"
500,000 to	600,000	"	"	"	"	"	11½¢	"	"
600,000 to	700,000	"	"	"	"	"	11¼¢	"	"
700,000 to	800,000	"	"	"	"	"	11¢	"	"
800,000 to	900,000	"	"	"	"	"	10¾¢	"	"
900,000 to	1,000,000	"	"	"	"	"	10½¢	"	"
1,000,000 to	1,100,000	"	"	"	"	"	10¼¢	"	"
over	1,100,000	"	"	"	"	"	10¢	"	"

The minimum meter charge will be two dollars per month.

The price for making water service connections shall be as follows:

½ inch pipe	$7.00
¾ " "	8.50
1 inch pipe	10.00

The rates for all service hereby fixed shall go into effect as follows:

44 Domestic and commercial rates, October 1, 1907.
Lawn rates, January 1, 1908.

The above and foregoing schedule or rates for water to the consumers within the corporate limits of the city of Cœur d'Alene, are hereby fixed as above stated.

R. T. MORGAN,
Chairman.
HENRY BODLER,
Secretary.

44½ [Endorsed:] No. 1599. In the Supreme Court. Albert L. Hatch, Plaintiff, vs. Consumers Company, Lt'd, Defendant. Answer. R. E. Elder, Gray & Knight, Att'ys for Defendant, Cœur d'Alene, Idaho. Filed this 7 day of Apl., 1909. I. W. Hart, Clerk.

45 In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS COMPANY, LIMITED, a Corporation, Defendant.

Motion to Strike.

Now comes the plaintiff, Albert L. Hatch, in the above entitled action, by Reed & Boughton, his attorneys, and moves to strike from defendant's answer all of paragraph I, because the matter therein alleged is immaterial and constitutes no defense to plaintiff's cause of action.

Defendant having admitted lines 10, 11 and 12 page 4 of its answer, herein filed, that it has a water main laid on Third Street in front of plaintiff's premises, plaintiff moves to strike all of paragraph 4 of defendant's answer down to and including the word "limited" in line 9 of page 4, and beginning with the word "but" on line 11 down to and including the word "customers" on line 15 of said page 4, for the reason that the matter therein alleged is immaterial and constitutes no defense to plaintiff's cause of action.

Plaintiff moves to strike all of paragraph 6 of defendant's answer down to and including line 8 on page 5 thereof, beginning on line 11, the word "as" down to and including the word "thereof" on line 17 of said page 5, and beginning with the word "denies" on line 20 down to and including the word "water" on line 26, for the reason that the matter therein alleged is immaterial, irrelevant and is not a denial of any material allegation of plaintiff's complaint and constitutes no defense to plaintiff's cause of action.

Plaintiff moves to strike beginning with the word "including" on line 2 of page 9 down to and including the word "con-
46 nections" on line 3 of page 9, and beginning with the word "and" on line 9 down to and including the word "connections" on line 10; beginning with the word "and" on line 21, of said page 9, and all the balance of paragraph 3 of defendant's affirmative defense for the reason that the same is immaterial, irrelevant and constitutes no defense to plaintiff's cause of action.

All of paragraphs 4 and 5 of defendant's affirmative defense, for the reason that the same is immaterial, irrelevant, incompetent and constitutes no defense to plaintiff's cause of action.

Plaintiff moves to strike all of paragraph 7, and all of paragraph 8, of defendant's affirmative defense, for the reason that the matter therein alleged is immaterial, irrelevant, incompetent and constitutes no defense to plaintiff's cause of action.

Plaintiff moves to strike all of paragraph 9 of defendant's affirmative defense for the reason that the material therein alleged is a matter of record in the office of the City Clerk of the city of Cœur d'Alene, and also in the office of the County Recorder of Kootenai County, Idaho, and cannot be denied upon information and belief.

Plaintiff moves to strike all of paragraph 10 of defendant's affirmative defense, for the reason that the matter therein alleged is denied upon information and belief, and that the same is a matter of record in the office of the City Clerk of Cœur d'Alene, Kootenai County, Idaho, and for the further reason that the matter therein alleged is immaterial, it appearing from defendant's answer that defendant has water main along Third Street in front of plaintiff's said premises from which it is supplying the inhabitants of Third Street.

Plaintiff moves to strike all of paragraph 11 of defendant's affirmative defense, for the reason that the matter therein alleged is immaterial, irrelevant and constitutes no defense to plaintiff's complaint.

47 Plaintiff moves to strike all of what purports to be a report of the commission appointed to fix rates, for the reason that the same is not properly identified and constitutes no part of defendant's answer to plaintiff's complaint; also all reference to same.

Endorsed: Motion to Strike. Filed this 7th day of April, 1909. I. W. Hart, Clerk.

48 *Record Entries.*

The following entries appear of record in this case, under the respective dates:

BOISE, IDAHO, *April* 7, 1909.

No. 1539.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS' COMPANY, L'T'D, a Corporation, Defendant.

Application for Writ of Mandate.

This cause having been heretofore set for hearing, now on this day the same was called, E. V. Boughton appearing for plaintiff and H. P. Knight and Robert H. Elder appearing for defendant. After argument upon plaintiff's motion to strike out certain portions of the answer, the court took said motion under advisement, and after having fully considered the same, the decision of the court was delivered by Justice Ailshie, to the effect that said motion be overruled with reference to those parts of the answer from the commencement thereof down to the words, "including the rate to be charged for making service connections," in lines 2 and 3 of page 9 of said answer, and that the motion be sustained with reference to said words, "including the rate to be charged for making service connections;" that the motion to strike be sustained with reference to the words "and for putting in service connections," in lines 9 and 10 of page 9, and with reference to all the remainder of paragraph 3 of the affirmative defense beginning with the words, "and defendant

further alleges," in line 21 of page 9; that said motion be sustained with reference to striking out paragraphs 4 and 5 of the affirmative defense in said answer, and that the motion be denied as to
49 all other matters pleaded in said answer.

It was further ordered, upon the agreement of counsel in open court, that R. N. Dunn be appointed as referee to take the testimony on all the material issues made by the pleadings herein, and that he report such testimony to this court on or before the 1st day of June, 1909.

Counsel were granted permission to file typewritten briefs, counsel for defendant to be allowed five days after plaintiff's brief is served upon him in which to file reply brief.

LEWISTON, IDAHO, *September* 6, 1909.

This cause having been heretofore set for hearing, now on this day the same was called, E. V. Boughton appearing for plaintiff and R. H. Elder and H. P. Knight appearing for defendant. After argument the cause was submitted and by the court ordered taken under advisement.

BOISE, IDAHO, *November* 9, 1909.

This cause having been heretofore heard, submitted and taken under advisement by the court, and the court having fully considered the same, now on this day the cause was again called, and the decision of the court is delivered by Justice Ailshie, to the effect that plaintiff's application for a peremptory writ of mandate be granted.

It is therefore considered, adjudged and decreed that a peremptory writ of mandate issue under the seal of this court directed to the defendant herein, commanding said defendant to forthwith connect its water main with the water pipe on plaintiff's premises, and that it make such connection and furnish water to plaintiff for
50 domestic purposes upon receipt of the monthly water rent, in accordance with the prayer of plaintiff's complaint, and that defendant make return to the clerk of this court within thirty days from the date of this decision, showing that it has complied with such order of the court. Costs are awarded in favor of plaintiff.

51 In the Supreme Court of the State of Idaho.

Before Hon. R. N. Dunn, Referee.

ALBERT L. HATCH, Plaintiff,

vs.

CONSUMERS COMPANY, LTD., Defendant.

Transcript of Evidence.

Reed & Boughton, for Plaintiff.
Gray & Knight and R. H. Elder, for Defendant.

Evidence taken at Cœur d'Alene, Idaho, commencing on the 21st day of May, 1909, and continued from time to time thereafter until completed.

Filed this 1 day of June, 1909. I. W. HART, *Clerk.*

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53 (Mr. BOUGHTON:) Has your honor read the pleadings?

(REFEREE:) I have not. I supposed the order itself set out the particular evidence to be taken.

(Mr. KNIGHT:) At that time the pleadings were not completed. The plaintiff had not answered in any way the cross-issues; the issues are made upon the affidavit formerly made and the answer thereto. The reason the Supreme Court did not fix the issues in the order was that they were not certain what the issues were to be at that time, as stated by Judge Stewart, as I understood.

(Mr. BOUGHTON:) As I understand the answer set up several affirmative defenses and the motion to strike out as to——

(REFEREE:) The motion was sustained as to some matters and overruled as to others.

(Mr. KNIGHT:) In regard to the portions of the answer stricken out, at the time the matter was before the Supreme Court it was understood that it probably would go from the Supreme Court of this State to the Supreme Court of the United States and the Judges stated at the time we argued the matter there that notwithstanding the order striking out portions of this mater, we had he right to consider the whole case at the time of the final argument, and we shall offer testimony in support of the portions of the answer stricken out. It will be for the Supreme Court to say whether it shall have any effect or not.

(REFEREE:) I confess that I am not thoroughly familiar with proceedings of this kind. It was my impression that probably all of the testimony offered by either party should go into the record.

(Mr. KNIGHT:) I think so.

(REFEREE:) Of course, objection being made. It is not like submitting evidence to a jury. It will go before the Supreme Court and they will reject what they consider immaterial and incompetent.

(Mr. BOUGHTON:) I do not so understand the order of the Supreme Court. Motion was made to strike out a large part of the affirmative defense and also some of the answer, and the order was to strike out those portions of the answer, and rule 70 of the Supreme Court reads (Reads rule). Now the order of the Supreme Court, as I understand it, and as I understood it there, from the

order, was that no evidence will be submitted on those particular issues that have been stricken out by the order of the court. There are several other matters there in the affirmative defense in that answer that we objected to and the court overruled the motion as to them. I think it is not incumbent upon this Referee to accept any evidence upon any matter directly passed upon by the court when it made that order. The pleadings as they stand before your honor are stated in that order, and those particular parts stricken out are not before you and no testimony can be submitted on them.

(REFEREE:) Mr. Boughton, I am inclined to the view that the testimony—all the testimony—offered by either party should be taken by me and reported to the Supreme Court. I do not understand that I have any discretion, as a matter of fact, to rule out anything that may be offered, as immaterial. I cannot see what harm would result from that course to any party as the court is the only tribunal that will pass upon the testimony offered. Of course your objections, or the objections of either party will go into the record.

54 ALBERT L. HATCH, called and sworn on his own behalf and examined in chief by Mr. Boughton, testified as follows:

Q. Where do you reside?

A. 1119 Third St., Cœur d'Alene, State of Idaho.

Q. You may state whether or not you are residing within the city limits of Cœur d'Alene.

A. Yes, sir.

(Mr. KNIGHT:) Objected to as not the best evidence. Ask him where he resides.

(Mr. BOUGHTON:) You answered that question?

A. Yes, sir.

Q. Where do you reside with reference to the subdivisions of the city?

A. I understand it is in Krotzer's Addition.

Q. Have you, at any time since the 1st of January, 1909, applied to The Consumers Company to be supplied with water from their main?

A. Yes, sir.

Q. State whether or not the Consumers Co. have a main extending in front of your premises on Third St.?

A. Yes, sir.

Q. Did the Consumers Company supply you with water?

A. No, sir.

Q. State whether or not they refused to supply you with water—state about when you demanded water from them and what took place at that time?

A. I went down to the office, I presume it is two months, perhaps more, ago, and asked for water to be—to be connected up by a tap by the company out there at their office and tendered them their regular fee for a month's service of water in advance, which they refused to accept.

Q. What fee did you tender?
A. $1.50.
Q. Did you understand that this was the regular rate charged by the Consumers Co. for water for one month?
A. Yes, sir.
Q. For a house of the kind you have on your premises?
A. Yes, sir.
Q. What is the size of the house you have there and how many faucets do you propose to install?

(Mr. KNIGHT:) I object to his proposition; the only question that is pertinent is what kind of a house he had there at that time.
(REFEREE:) He may answer that question.
Exception.

A. The main foundation of the house is 24 by 36. I intend to have one or two faucets.
(Mr. BOUGHTON:) State whether or not you had laid a service pipe out to six feet beyond the lot line?
A. Yes, sir, the pipe is there now.
Q. How many faucets did you have at that time?
55 A. I have not put any faucets on the pipe yet. I have a shut off valve—waste valve shut off so the water could be turned on at any time and I could continue on my connection.
Q. Was it arranged so you could attach a hose to the pipe?
A. Yes, sir.
Q. As soon as the water could be turned on?
A. Yes, sir.
Q. So the water could be turned on?
A. Yes, sir.
Q. State whether or not you needed the water on the premises at that time?
A. Yes, sir.
Q. For what immediate purpose?
A. Well, I think at that time when I applied for a tap I was about to plaster my house.
Q. State whether or not you were residing there in a tent or any other structure, at the time you applied for this water, with your family?
A. Yes, sir, I was living in a tent on the adjoining lot.
Q. State as to whether or not you had any means of procuring water or could procure it from any other source than through the Consumers Company?
A. No, sir, not that I know of.
Q. How many rooms are there in the house—were there in that house?
A. Five.
Q. State if you know the source of the supply of the Consumers Co.?
A. The water is taken from Cœur d'Alene lake south and east of the city.
Q. State whether or not you were ready and willing and able to

pay the regular monthly rate charged by the Consumers Co. for furnishing water?

A. Yes, sir, I was.

Q. State whether or not the Consumers Co. is supplying your neighbors, and was, at the time you made application for water from the main on Third St.?

A. Yes, sir.

Q. State how many residences there were within the radius of 300 feet on either side of Third St. from your premises?

A. Five I think.

Q. You state that $1.50 was the regular monthly rate charged by the Consumers Co. to your neighbors in that vicinity for houses similar to yours?

A. That is what they told me at the office.

Q. State whether or not they refused to supply you with water on those premises?

(Mr. KNIGHT:) I object to his stating why. If he can state any reasons that they gave; all right; in that case he should state who it was who gave the reasons—the conversation.

A. They told me I would have to——

(BOUGHTON:) Who told you?

A. The clerk first told me that I would have to pay $8.50 for a tap before I could get service.

56 Q. Did they make you any other proposition to furnish you with water?

A. Yes, sir.

Q. State what that was?

A. Not at that time. Some days later.

Q. Did they require you at that time, in lieu of a tap fee of $8.50, to pay any other sum in advance?

A. I would like to have the question explained again.

(Question read.)

Q. You are the plaintiff in this case are you not?

A. Yes, sir.

—. You read this affidavit and complaint did you not? State whether or not they asked you to conform to those regulations and state what they are.

A. Yes, they offered me a contract I believe to sign that they had there, which is explained in this here.

Q. What are the terms of that proposition that they submitted?

A. First, in consideration of $8.50 cash paid in advance; second, in consideration of a deposit of $15.00 cash to be paid in advance, the same to be refunded when tap is taken out, less the actual cost of labor and the cost of one corporation cock. Third, in consideration of $40.00 cash paid in advance the same to be applied in payment of water used from this tap. That was the contract they asked me to sign which I refused to do.

Q. You refused to sign that application?

A. Yes, sir.

Q. Did you ever at any time submit a proposition in writing to

the Consumers Co. agreeing to be bound by any reasonable rules and regulations which might be adopted by the company and pay the regular price for water?

A. Yes, sir.

Q. You may state the nature of that writing—written proposition. (Hands paper to witness.) You can refresh your memory from that.

A. Tead this written contract that I agreed to be bound by?

Q. The proposition you submitted.

A. "I hereby request you to make one three-quarter inch tap and extend service pipe to the curb in front of the following described property, to wit, commencing at the northeast corner of lot 14, Krotzer Addition, Cœur d'Alene, Idaho, thence south along the east line of said lot 14, 44 feet to the point of beginning, thence west 150 feet parallel with the north line of said lot 14, thence at right angles south 44 feet, thence east 150 feet parallel with the north line of said lot 14, thence north along the east line of said lot 14, 44 feet to place of beginning. I hereby agree to be governed by the reasonable rules and regulations of the company or that may be established from time to time by the company, except, however, in so far as the rules and regulations require the payment of $8.50 cash for the above tap or a deposit of $15.00 in cash the same to be refunded when tap is taken out less the actual cost of labor and the cost of one corporation cock or a deposit of $40.00 cash the same to apply on payment of water used from said tap." This the Consumers Co. refused to me—refused to accept this contract or proposition.

Q. To whom did you submit that proposition?

A. They also refused the $1.50 that I tendered them at this same time for a month's service in advance.

Q. To whom did you submit this written proposition?

57 A. To Mr. Hohn acting manager of the water company on that day.

Q. You still keep your tender good do you, of $1.50?

A. Yes, sir.

Q. Do you know as a matter of fact whether that $1.50 has been paid into court?

A. I think it has, I don't know.

Cross-examination.

By Mr. KNIGHT:

Q. You live in Krotzer's Addition?

A. Yes, sir.

Q. How long have you lived there?

A. Since about the 23rd or 22nd of December.

Q. 1908?

A. 1908.

Q. On what lot do you live?

A. At the present time?

Q. Yes.

A. A portion of lot 14.

Q. What block?

A. I just don't remember right now what the number of that block is.

Q. Don't remember the block?

A. Not at the present time, I cannot recollect the number of the block.

Q. Have you lived on that same place since December 1908?

A. Yes, sir. Let us see; I wish to correct that statement. I lived on lot 13 I think for a short time.

Q. 13 in the same block?

(BOUGHTON:) 15 I think.

A. 15.

(Mr. KNIGHT:) Did you live on lot 15 in the same block?

A. Yes, sir.

Q. How long did you live on lot 15?

A. Three months.

Q. When did you begin to live on lot 14?

A. About the 25th or 28th of March.

Q. 1909?

A. Yes, sir.

Q. 25th or 28th of March?

A. About that time.

Q. Do you know where lot 15 is with reference to lot 14, the adjoining lot?

A. Yes, sir.

Q. South of the one you are living on now?

A. That was just north.

Q. North of the one you are now living on?

A. Yes, sir.

Q. When did you begin to build your house there, Mr. Hatch?

A. I had the material hauled there early in the winter.

Q. When did you begin to build your house there?

A. I think it was along about the first of March.

58 Q. Don't you know when you began to build it there?

A. I might from looking up some notes.

Q. Have you got your notes here?

A. No, sir, I have not here.

Q. Don't you know when you began building it?

A. I don't remember any specific date, but it was about the first of March I started to do my carpenter work there on the lot.

Q. How many rooms were there to be in that house?

A. Five.

Q. On the 27th day of March what advance had you made in the building of that house—what progress had you made, how far was it along?

A. I had the house raised and about 200 (200) and some odd yards ready for plastering.

Q. You were not living in the house of course?

A. No, sir.

Q. You were living in a tent on the adjoining lot?

A. Yes, sir.

Q. Had been living in that tent since December?

A. No, sir.
Q. How long had you been living in that tent?
A. Since about the 28th of March.
Q. You didn't move into that tent until the 28th of March?
A. No, sir.
Q. How long did you live in that tent before you moved into the house?
A. Perhaps three weeks.
Q. You didn't move into your house until about the middle of April or a little later than the middle of April?
A. It would be about that time I think.
Q. Where did you live between the 28th day of March and December?
A. We rented of Mr. Boughton.
Q. Where was that?
A. Located on lot—on part of lot 15.
Q. In the same block?
A. In the same block.
Q. As a matter of fact those are blocks off there are they not, and not lots? That No. 14 up there is a block is it not?
A. No, sir, it is considered a lot.
Q. How big is that lot?
A. I just don't know; those lots are different sizes 14, 15 and 13 as near as my memory serves me, they are not all of the same size.
Q. Do you know how long they are?
A. They are 150 feet deep.
Q. Don't know how wide?
A. They are described—fractions of lots, described by metes and bounds.
Q. Do you know how wide the lots are?
A. I think about 200 feet.
Q. About 200 feet wide and 150 feet deep?
A. I would not say.
Q. They are not ordinary city lots?
A. No, sir.
Q. They are tracts of ground?
A. They are tracts.
Q. Really tracts of ground in the suburbs?
59 A. Oh, they have been surveyed into lots or sold in lots.
Q. They are not surveyed into any subdivisions smaller than those you have mentioned are they?
A. No, sir, I think not.
Q. When you moved into your house you had completed plastering had you not?
A. Yes, sir.
Q. Where did you get the water to do that plastering?
A. Tap adjoining my place.
Q. Tap adjoining that place?
A. I think on lot—lot 15—of *of* lot 15.
Q. In making this affidavit for Mandamus you swore that plaintiff has no way of procuring water for such purpose—I will read

the first of it; "that sometime ago plaintiff began the construction of a dwelling house on the above described property for the purpose of making the same his home; that in the construction of said house it is necessary to have water to mix plaster and other purposes, that plaintiff has no way of procuring water for said purpose and domestic uses of said dwelling house excepting from the Consumers Company, that he has laid a three quarters inch water pipe *deom* his house and extended the same out six feet from the line of said lot." You made that affidavit did you not?

A. Yes, sir.

Q. You had plenty of water there for the purpose of plastering your house did you not?

A. With a lot of effort I managed to get some water there.

Q. You never paid the company for it did you?

(BOUGHTON:) Object to that as immaterial.

(KNIGHT:) Never paid for it did you?

(BOUGHTON:) We take an exception to all of this.

(KNIGHT:) Answer the question.

A. No, sir.

Q. You were able to pay for it were you not?

A. Yes, sir.

Q. You never offered to pay them for it?

A. Well, yes, I did in a way.

Q. Offered to pay them for that water that you used in the plastering of your house?

A. I didn't offer to pay them for any particular water for any particular purpose.

Q. The water you took from them that you used in plastering the house you never offered to pay them for that did you?

A. I did offer to pay them for water.

Q. For the water you took and used in plastering the house?

A. Prior to that——

Q. For the water you took and used in plastering the house, did you offer to pay them for that water?

A. I would consider so.

Q. Answer my question straight out, not whether you considered so or not. Did you offer——

A. I offered to pay them for all the water I was using.

Q. Did you offer to pay them for the water you used in plastering the house?

60 (BOUGHTON:) Objected to; he has answered the question fairly.

A. I considered I did.

(KNIGHT:) I have a right to a direct answer if your honor please. I have a right to a categorical answer to that question.

(REFEREE:) Have you got that objection in the record? I think it would be well for counsel each time to get an objection in the record and I presume in view of the ruling that was made at the outstart there should be an exception taken to the ruling.

(BOUGHTON:) I do not think this is material. I would like to save a general exception to all this class of questioning.

(REED:) I object to the question for the reason that it has already been answered.

(REFEREE:) He may answer.

Exception.

(KNIGHT:) Did you offer to pay them for the water you used in plastering the house, yes or no?

(BOUGHTON:) That is not a fair question. I just simply desire to object to that process for the reason that it is not fair, it is not proper cross-examination; he has already answered it directly and it is the purpose of counsel to embarrass the witness.

(REFEREE:) Let him answer the question and he can make any explanation he chooses afterwards. It is absolutely immaterial in any event whether he did offer to or not.

Exception.

A. I didn't offer to pay for the water for this specific purpose; there was no stipulated reason why I wanted the water or what I wanted to use it for.

(KNIGHT:)

Q. You had no contract with them to use that water at all for that purpose did you?

A. No, sir, I had no contract.

Q. Of any kind?

A. No, sir.

Q. You have been using water on your place ever since have you not?

A. Yes, sir.

Q. And have not paid them for it?

A. No, sir.

Q. They have sent you bills have they not?

A. Sometimes.

Q. You never paid them?

A. No, sir.

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial and improper cross-examination.

(KNIGHT:) Ever since you have plastered your house and while you have been living on that lot 14 you have been using this water from this company's taps right along?

A. Yes, sir.

Q. Using it for domestic purposes right along all the time?

A. Yes, sir.

Q. Without any arrangement with them at all?

A. Yes, sir.

Q. Never paid them and never offered to pay them for it?

Objected to.

A. Yes, I offered to pay them for it.

61 Exception.

Q. For the water you were using there?
A. Yes, sir.
Q. When?
A. About Christmas.
Q. You didn't move there until the 27th of March?
A. Well, you asked me the question when I offered to pay them for this water.
Q. Yes, for the water you have been using at this place where you now live.
A. Your question was general.
Q. No, sir, my question was whether——
A. You were first talking about the plastering; now you are talking in general.
Q. I have been talking of the water you used in plastering the house and that you have used for domestic purposes.
A. Yes, and I am answering you for general house purposes, I have offered——
Q. Have you offered to pay them for the water used on lot 14 since you have lived on lot 14?

(BOUGHTON:) He has sworn he offered or tendered them money for that purpose.
(COURT:) It seems to me it is getting entirely outside of the issues in the case.
(KNIGHT:) Our answer raises the question that he has been using our water for a great many months, that he has never paid us anything for it at all. That is part of the case. We allege in our answer that the plaintiff here has been using the water furnished by this defendant for a long period of time and would not pay for it and that he owed them a back bill and that is the reason they would not put in a tap at that time.
(BOUGHTON:) That is the specific part of the pleadings that the Supreme Court struck out. The averment itself is an affirmative defense and counsel has no right to prove their case on cross-examination of our witness, and I object to it further for that reason.
(REFEREE:) I do not think it is proper cross-examination.
Exception.
(KNIGHT:) They opened the question.

A. Being that I made the statement I wish to continue the statement I was about to make.
(COURT:) Make the statement.
A. I offered three different times to pay them for this water during the time I was engaged in building my house and using this water, three different periods.
(KNIGHT:) For the water you were using from that tap, that you did use?
A. Yes, on three different occasions.
Q. To whom did you may the offer?
A. My wife took a check to the office the first day of January and tendered it.
Q. My question was whether you paid this company for the water

you used in plastering that house during the month of March and that you had used subsequent to that time.

A. How could I pay them when they would not accept it.

62 (COURT:) I understood him that he made the offer to pay.

(KNIGHT:) This is not an answer to my question; he starts in to answer something about his wife taking a check to them in January long before he moved onto lot 14.

(BOUGHTON:) Mr. Knight stated in his argument that it was part of his case to prove that this plaintiff had been using their water for a period of several months and that he had not offered to pay for it, and now he objects to the answer to that question.

(KNIGHT:) I have a right to answers to my questions if they are pertinent at all.

(REFEREE:) That is true, but I understood witness to be answering the question you asked.

(KNIGHT:) I refer to the stenographer's notes.

(REFEREE:) Let us proceed with the examination.

Exception.

(REFEREE:) I was laboring under a misapprehension as to what was required in this case; instead of the order setting out certain specific matters on which testimony was to be taken——

(BOUGHTON:) I desire to make a statement in connection with the statement that Mr. Knight has just made. I am not attributing to him any motive I should not; but I specifically asked the court—they intimated that this was a material issue as to whether or not this was in the corporate limits of the city and I asked them if they wanted testimony upon any other issue than that this addition was within the corporate limits. They said all the balance of the issues made by the pleadings after those matters had been stricken out, as I understood it. That is the exact statement of Judge Ailshie.

(KNIGHT:) Judge Stewart said that the pleadings were not complete, that the issues would have to be made by the pleadings and the issues are made by the pleadings. Counsel has neglected to answer our affirmative matter and the case will be presented upon the application for mandamus and upon the answer and under the ruling stated by the Idaho Supreme Court I think all the testimony should go in and be submitted to the Supreme Court. We cannot gain anything by presenting matters not material. We are going to take this case to the limit for the purpose of determining the law and that is the reason we want to bring in this evidence. I know the Supreme Court wants to hear it.

(REFEREE:) Under the circumstances surrounding the case and in view of the fact that the referee is not to make any findings, I have taken the view, and still do, that all the testimony ought to go in in order that the court ma*de* have it before it when it makes its decision. Let the examination proceed.

Exception.

(KNIGHT:) We want to get along in a friendly way, it is strictly questions of law—if we can have straight out answers it will facilitate the examination a great deal.

(Question read.)

A. I have not as yet paid them for the water.

Q. Do you remember when it was that you first went to the Consumers Co.'s office and asked them to put in a tap up there. You made the affidavit on the 27th?

A. The 27th of March?

Q. Yes, the 27th of March; was it about the 20, that is the date the written proposition——

A. That would be the date.

63 Q. Who did you go to there Mr. Hatch?

A. I went to the Consumers Co.'s office and met a clerk by the name of Elder who referred me to the general manager, Mr. Harding.

Q. The gentleman sitting here?

A. Yes, sir.

Q. He is the individual you had the talk with is he?

A. No, sir.

Q. Who did you?

A. He referred me to lawyer Elder.

Q. Did you have any talk with Harding at that time?

A. I had a few words with him.

Q. Did you make your proposition to him?

A. Before him and Mr. Elder I think.

Q. I am talking about the oral or verbal conversation on the same day you made this written proposition, who was that with?

A. This written proposition?

Q. No, the talk you had.

A. I was in the office several times during that same day.

Q. On or about the 20th?

A. Yes.

Q. Who did you have talks with?

A. With different ones in the office.

Q. Mr. Harding?

A. Yes, sir.

Q. Who else?

A. A clerk by the name of Elder.

Q. What talk did you have with Elder?

A. I demanded a tap on the lot where I wished to have my water connected for service there for general purposes, and also talked to Mr. Hahn acting manager when Harding was away.

Q. Hahn present when you talked to Elder?

A. He was about the office.

Q. At that time you were not living in your house?

A. No, sir.

Q. Nor living on lot 14?

A. Yes, sir.

Q. I thought you said you were living on lot 15 until the 28th day of March?

A. Yes.

Q. You were not living on lot 14 at all at that time, your tent was on lot 15?

A. No, sir, my tent was on lot 14.
Q. I thought you said it was on lot 15?
A. No, sir, I lived in a house on lot 15.
Q. Until the 28th?
A. Yes, sir.
Q. You had water there?
A. No, sir.
Q. You didn't ask them to put water there?
A. Yes, sir.
Q. On 15?
A. Yes, sir.
A. At that time?
64 A. Three months earlier than that.
Q. That was Boughton's house?
A. Yes, sir.
Q. You didn't own that house?
A. No, sir.
Q. You began living on lot 14 on the 28th?
A. Yes, sir.
Q. Eight days after this conversation or about that?
A. I don't remember just the number of days, sometime shortly after.
Q. Your house was not plastered yet anyway?
A. No, sir.
Q. Just ready for the plaster?
A. Yes, sir.
Q. There were no houses on lot 14 were there?
A. Only the one I was building.
Q. From what place did you bring water to mix that plaster?
A. I think I carried it from Mr. Reed's place.
Q. Did you tell Mr. Hahn or Mr. Elder anything about the construction of that house, how many paths you were going to put into it?
A. I do not remember of my talking about a bath.
Q. Didn't talk about that at all?
A. No, sir, I think not.
Q. Any toilet?
A. No, I think not at that time.
Q. Or whether you were going to keep a cow or horse?
A. There was nothing said about that.
Q. Nothing said about whether you were going to water the lawn?
A. No, sir.
Q. No explanation made about that whether you were going to water a lawn, or keep a horse or cow or have a toilet or bath or anything of that kind?

(BOUGHTON:) Objected to as not proper cross-examination, and save an exception.

(REFEREE:) It is connected with the direct examination sufficiently to be proper.

A. I cannot remember.

(KNIGHT:) Can't remember anything about that.
A. I can't remember if I did or didn't.
Q. You didn't even tell what sized house you were building did you?
A. I don't know as I did.
Q. Didn't tell them whether it was to be a residence or store or hotel or what it was going to be; simply went there and asked them to put in a tap didn't you?
A. I explained to them I was building there and wished to have water service at that place.
Q. Because you were building a house there?
A. Yes, sir.
Q. That is practically all you did say?
A. I think that was what I said.

65 Redirect exam.

By BOUGHTON:

Q. Was the house you were building, the five room house to which you have testified, ready for plastering at the time you made the demand on the Consumers Co. on March 22nd, as alleged?

(KNIGHT:) Objected to; witness has already testified that it was.
(REFEREE:) Answer the question.
Exception.

A. I think the house was ready at that time.
(BOUGTON:) I will ask you to look at that affidavit and refresh your memory and state upon what day you demanded of the Consumers Co. to provide you with water?
A. I see by this it is the 22nd day of March, 1909.

(KNIGHT:) The record don't show what he fixes it by.
(BOUGHTON:) By the affidavit.
(KNIGHT:) Our copy says the 20th.
(BOUGHTON:) It is alleged that he made the application actually on the 22nd; the writing was dated two days before. The demand was actually made on the 22nd as alleged in the complaint.
Q. Is all of that house of yours plastered now?
A. No, sir.
Q. I will ask you again about what time you moved over into the house on Third St. from where you first moved on Third St.?
(KNIGHT:) What house the Boughton house?
(BOUGHTON:) The house where they were, yes.
A. I think it was the 22nd day of December.
Q. You may state whether or not there was water at that place at that time?
A. Yes, sir.
(KNIGHT:) What is that?
(BOUGHTON:) Where there was water at the house he rented at the time he moved in there. Did you offer to pay the Consumers Co. the regular monthly rental at that place on or about the first of January?

(KNIGHT:) Objected to as not within the pleadings; nothing in the pleadings concerning it.

(REFEREE:) Answer the question.

Exception.

A. Yes, sir.

(BOUGHTON:) You may state whether or not that money was accepted by the Consumers Co.?

A. No, sir, it was not.

Q. State what followed.

(KNIGHT:) Objected to as immaterial and not in the pleadings.

(BOUGHTON:) State whether or not after they refused to accept the money, if they accepted it at any time, and if they did not, what did they do?

A. I made a trip especially to the office a few days later and tendered them a check for the payment of the water and they refused it again; and in about ten days they came and shut the water off.

Q. State whether or not the amount you tendered them for water at that place where you were renting was the correct amount for water to be furnished under those circumstances?

A. Yes, sir.

66 Recross-exam.

By Mr. KNIGHT:

Q. Did you tender them a check Mr. Hatch?

A. Yes, sir.

Q. Whose check was it?

A. My check.

Q. Check signed by yourself?

A. Yes, sir.

Q. For what amount?

A. $1.50.

Q. That was the only offer that you made at that time?

A. At that particular day.

Q. Prior to the cutting off of the water which you say was about ten days afterwards, you didn't make any other tender to them did you excepting this check?

A. My wife tendered the check first for me and it was refused and later a few days later I went down town and tendered the same check to them.

Q. That check was the only thing tendered to them there by your wife at that time?

A. At that time.

Redirect exam.

By BOUGHTON:

Q. Was there any objection made to the form of the tender? Did they object to accepting the check because it was a check and demand any other tender by you?

(KNIGHT:) Objected to as calling for an opinion.
Overruled. Exception.

A. No, sir.

Objected to as not competent. Overruled. Exception.

A. They didn't object to the check not particularly, the check itself.

(BOUGHTON:) Did they say whether that was a good tender?

(KNIGHT:) Objected to as incompetent.
Exception.

A. No, sir.

Q. You have been getting water since all the time you have been living there have you not?

A. They stated why the check was not accepted at that time.

Q. What reason did they give?

A. They said there was a back bill and this check read for January water rent which they could not accept as long as there was a back bill.

Q. Where are you getting water now?

A. I cannot recollect the name of the people that live at the place.

Q. Your next neighbor there?

A. Near neighbor—nearest neighbor across opposite side of the street.

Q. Where does that water come from?

A. From the Consumers Co.

Q. Is there any other way you can get water except from the Consumers Co.?

67 A. No, sir.

Recross-exam.

By Mr. KNIGHT:

Q. You have been getting water ever since you moved up there?

A. Yes, sir.

Q. You say they refused this check and told you they refused it because there was a back bill?

A. Yes, sir.

Q. What about this back bill? There was a back bill was there not?

Objected to. Overruled. Exception.

A. No, sir.

Q. Had they not presented you a bill often prior to that time?

A. Yes, sir.

Q. You say they had?

A. Yes, sir.

Q. From about the first day of June 1907 up to December 1908 you lived at lot No. 1 Block 2 of Varnum's Addition didn't you?

A. Yes, sir.

Q. During all of that time or practically all of that time you used water from the mains of this defendant company?

(BOUGHTON:) Objected to as proving the case as alleged in their affirmative defense and not proper cross-examination. Objected to further for the reason that it was stricken out on motion, by the Supreme Court and is not part of the issues in this case. Object — all *all* the evidence introduced in regard to that.

Overruled. Exception.

(KNIGHT:) You got water practically all that time from the mains of this company did you not?

A. Part of the water that we used.

Q. Where else did you get water?

A. We were able to catch some water from the house.

Q. From the rain?

A. From the rain and melting snows.

Q. Did the snows melt or rains fall up where you are living now?

A. Yes, sir.

Q. In close proximity is it not, about the same place?

A. Yes, sir.

Q. Practically all the water you used at that time you got out of the mains of this defendant company didn't you?

A. For drinking purposes and cooking.

Q. And for general use didn't you?

A. Not entirely.

Q. I say a large part of it you got didn't you for domestic purposes generally?

A. A large part was a small part.

Q. There was not hardly a day you didn't get water from the main was there?

A. Part of the time.

Q. There was hardly a day went by during that entire time that you didn't get water from their main was there?

A. Sometimes periods lapsed of 10 days.

68 Q. There was one time was there not that you were away for 10 days or 12 or 15 days?

A. Yes, sir.

Q. The rest of the time you got water there?

A. I was away the entire summer—several months, and my wife lived at the place. I could not say anything about that; I presume likely she carried what water she wanted.

Q. You never paid them for that water did you excepting when you offered to pay $1.50.

A. While I was living at that place I paid them quite a number of payments for water.

Q. Was it not just one payment of $1.50?

A. No, sir.

Q. Do you remember the amount you paid them?

A. I don't know whether I would remember the amounts or not. When I moved to this place I wish to say that the water rent was $1.00 for a carrying privilege.

Q. For June, July and August, you on August 19th paid $1.50

didn't you, went to the office and got credit for *for* $1.00, for the time you were absent?

A. I was not living at the place at that time.

Q. June, July and August?

A. I was buying water down town at the same time on another property where I was living.

Q. From September you lived there right along and never paid them anything?

A. What was the date of that payment of $1.50?

Q. Your payment was Aug. 19th, 1907.

A. I paid them for all water up to that time.

Q. From that time on you continued to use the water?

A. Yes, sir.

Q. Right along until December 1908 when you moved over to the other place?

A. Yes, sir.

Q. You never paid them anything for that?

A. No, sir.

Q. $23.50 you owed at that time?

A. I don't know.

Q. At the rate of $1.50 a month?

A. I don't know.

Q. You never paid them anything for January, February and March, 1909?

A. No, sir.

Q. They presented you bills for that did they not different times?

A. At different times there were bills.

Q. You knew the schedu*al* fixed by the water commissioners here, that they were entitled to charge under the schedu*al* fixed by the water commissioners published in the paper? You knew the water company was entitled to charge you $1.50 for water carried from neighbors' mains didn't you?

(BOUGHTON:) Objected to, it is not a proper question, what they were entitled to receive.

(KNIGHT:) We have set up the rates of the water commission?

(COURT:) Answer the question.

69 Exception.

A. I don't know whether they were entitled to it or not.

(KNIGHT:) You knew that was the finding of the commissioners didn't you?

A. I understood that.

Q. You understood that was the finding of the commissioners that they were entitled to $1.50 for carrying water from a neighbor's mains? When you resided in Varnum's addition the street in front of your place was not graded was it?

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

(BOUGHTON:) We might as well object to all of this testimony; we object and we would like to have an exception.

(KNIGHT:) That will be understood.

(BOUGHTON:) At the close of the evidence I would like to have a general exception to all the testimony offered with reference to the time that Mr. Hatch lived in the Varnum Addition.

(KNIGHT:) We are perfectly willing.

(REFEREE:) Yes.

(KNIGHT:) The streets in front of the addition where you lived were not graded were they?

A. No, sir, I think not.

(BOUGHTON:) I desire at this time to ask that all the evidence with reference to the time that Mr. Hatch lived in Varnum's Addition or in any other place other than the property on Third St. where he now resides, be stricken from the record, for the reason that it is immaterial, irrelevant and not a proper defense to any of the issues raised by the pleadings in this case, and I further object on the ground that it has been stricken out—the pleadings referring to that have been stricken out by the Supreme Court of the State of Idaho.

(REFEREE:) For the reasons heretofore stated the motion will be denied.

Exception.

(Witness excused.)

(BOUGHTON:) I desire at this time to have ordinances No. 99 and No. 162 marked for identification.

(Ordinances marked Exs. A and B.)

(KNIGHT:) Ordinance No. 99 appears to be an ordinance approved April 6th, 1904. We object to it for the reason that it is incompetent, irrelevant and immaterial for any purpose.

(BOUGHTON:) They have not been offered yet.

I now offer in evidence ordinance No. 99 of the Village of Cœur d'Alene which was passed and approved April 6th, 1904, and purports to be an ordinance extending the limits of the village of Cœur d'Alene and taking in the additions—Krotzer's and Varnum's Additions within the corporate limits of the now city of Cœur d'Alene.

(KNIGHT:) We object to it for the reason the ordinance itself shows that it was not properly, or in any way, indorsed by the certificates required by law, it does not show or purport to show that it was recorded with the county recorder or filed with the county recorder or that any of the necessary legal prerequisites have been carried out for the purpose of making the ground described in said ordinancees a part of the city or village of Cœur d'Alene.

We object to the introduction of that instrument for the
70 further reason that there is no description by metes and bounds of the lands mentioned therein.

Overruled. Exception.

(BOUGHTON:) I now offer in evidence ordinance No. 162 passed and approved September 4th, 1906, which said ordinance purports to create a city of the second class—make Cœur d'Alene a city of the second *second* class.

(KNIGHT:) Objected to as incompetent, irrelevant and immaterial.
Overruled and excepted to. Ruling excepted to.

ALBERT L. HATCH, recalled and examined by Mr. Boughton, testified as follows:

Q. At the last city election did you vote in the city of Cœur d'Alene for city officers?
A. Yes, sir.

(KNIGHT:) Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception.

(BOUGHTON:) You may state whether or not your property on 3rd St. where you reside has been assessed as in the corporate limits of Cœur d'Alene?

(KNIGHT:) Objected to as incompetent, irrelevant and immaterial, for any purpose.
Overruled. Exception.
A. Yes, sir.

(Witness excused.)

(Hearing and taking of evidence adjourned until tomorrow afternoon at 2 o'clock.)

(Taking of evidence resumed pursuant to adjournment.)

71 S. A. VARNUM, called and sworn on behalf of the plaintiff and examined in chief by Boughton, testified as follows:

Q. Where do you reside?
A. 1029 Second St. Cœur d'Alene City.
Q. Where do you reside in regard to the legal subdivisions of the city of Cœur d'Alene?
A. In Varnums Addition, 3rd ward.
Q. What is the position of Varnums Addition in regard to Krotzer's Addition?
A. It lies directly west.
Q. Is this the Varnum's Addition mentioned in the ordinance No. 99 that was taken into the city limits the same time that Krotzer's Addition was taken in?
A. Yes, sir.
Q. How long have you resided in Varnum's Addition?
A. Since 1901 I think.
Q. Have you voted at all the city elections since you resided there?

(KNIGHT:) Objected to as immaterial.
Overruled. Exception.

A. Yes, sir.

(BOUGHTON:)

State whether or not you ever occupied any city office in the city administration since you have resided in Varnum's Addition?

(KNIGHT:) Objected to as immaterial.
Overruled. Exception.

A. I have.

(BOUGHTON:) State what office you have held?

A. I was a member of the board of councilmen—city—village councilmen—truetees rather. I was one of the village trustees *un* until the time—and afterwards one of the city trustees or councilmen after the change from the village to the city—city of the second class.

Q. During what period of time did you occupy that position, what years?

A. 1906 and 1907 I think it was if I remember right.

Q. Are you familiar with the boundaries of the city of Cœur d'Alene?

A. I am.

Q. I show you a map of the city of Cœur d'Alene and ask you if you recognize that as approximately designating the boundaries of the city of Cœur d'Alene?

(KNIGHT:) I object to the question for the reason it would not be the best evidence of what are the boundaries of Cœur d'Alene.

(BOUGHTON:) I offer this, not as the best evidence, but in order to allow the witness to refresh his memory and testify to the approximate boundaries.

(REFEREE:) It seems to me the objection would be well taken.

(REFEREE:) I will overrule the objection.

72 Exception.

Q. —as it existed at the time on the 22nd day of March?

A. I do.

(BOUGHTON:) I will ask to have this marked for identification Pl'ff's Ex. C. (So marked.) I now offer in evidence this map not as official or absolutely correct map of Cœur d'Alene but as a map showing the approximate boundaries of the city as they exist now and did exist at the time of the filing of the complaint.

(KNIGHT:) Objected to as incompetent, irrelevant and immaterial, not properly identified and not the best evidence.
Overruled. Exception.

(BOUGHTON:) Do you know as a matter of fact whether Krotzer's Addition is near the extreme outter limits of the city or is it what would be called at this time close in?

(KNIGHT:) Objected to because there is no evidence establishing the limits of Cœur d'Alene by this witness or any one.

(REFEREE:) I think we are getting quite a bit of matter into this record against which the objections are valid. I think we ought to have as little of that as possible. I do not like the predicament

in which I find myself, overruling objections that I think ought to be sustained.
Exception.

A. Shall I answer that question?
(Question read.)
A. The city limits extend a half a mile north; I shou'd consider it close in.

(KNIGHT:) I move the answer to the effect that the city limits are half a mile north, be stricken out as it does not appear that the witness has any knowledge of it.
Motion denied. Exception.

(BOUGHTON:) You may state the source of your knowledge as to the present boundaries of Cœur d'Alene as far as the north end of the city is concerned.
A. I was employed by the county seat moving committee to take charge of getting signatures to the county seat removal petition in the third ward. They gave me a map and instructed me very thoroughly as to where the city limits were at that time. That was one source. I have also held the position of Registerer in the Lincoln Precinct and have had occasion to familiarize myself with the boundaries of the city; it was necessary that I should.

(KNIGHT:) I move that the answer be stricken out as improper and immaterial; it is not shown that witness had any reliable source of information to establish the limits of Cœur d'Alene by; it is not the best evidence and it is not shown that the best evidence cannot be produced.
Motion denied. Exception.

(BOUGHTON:) Do you know as a matter of fact whether there has ever been an official map of the city of Cœur d'Alene?
A. As far as I know there has not.
Q. State if you know whether the territory conforming to that portion of the city of Cœur d'Alene called Krotzer's Addition and within the limits, is pretty well settled up?

(KNIGHT:) Object to that as incompetent, irrelevant and immaterial, don't make any difference whether it is settled up or not.

(BOUGHTON:) That is to say, about how many families do you know reside on 3rd St. north of what is now Krotzer's Addition?

(REFEREE:) Your objection cover that as well as the
73 other?
(KNIGHT:) Yes, sir.
Objection overruled. Exception.

A. Yes, sir, that portion of the city is quite thickly populated, as much as it is in Krotzer's Addition.

(BOUGHTON:)

You may state if you know Mr. Hatch—you may state whether you accompanied Mr. Hatch to the Consumer's Company office on

the 22nd day of March, 1909, and was present when Mr. Hatch demanded that the Consumer's Company connect his place with the water main?

A. I was.

Q. State whether or not there was any tender made by Mr. Hatch to the company?

A. Yes, sir, there was.

(KNIGHT:) Objected to; the testimony of Hatch was that no tender was made.

Overruled. Exception.

A Yes, there was a tender made in cash.

(BOUGHTON:)

State the amount of the tender.

A. $1.50.

Q. To whom was that tender made?

A. To Mr. Hahn.

Q. What position if you know does Hahn occupy with the Consumers Co.?

A. I understand he was in charge of the office.

Q. What objection, if any, did Hahn make to complying with Hatch's request?

A. He had a written document that Hatch presented, he read it and pushed it back to him and said they could not consider it.

Q. That was all that was said?

A. That is all.

Q. Did you know the condition of Mr. Hatche's house at the time this tender was made, whether or not the house was nearing the plastering? nearing completion?

A. Why I think he had the house up and enclosed or partially enclosed, that is, the new house that he is building. What I mean by that, my recollection is that he had the windows in the rear portion of the house and was prepared so he could move from the tent into the house, and the front part of the house the windows were open at the time.

Q. Do you know how many rooms there are in that house?

A. I do not.

Q. State if you know the source of the water supply of the Consumers Co.?

A. It is taken from Cœur d'Alene Lake.

Q. Do you think there is enough water in the lake to supply the inhabitants with water?

(KNIGHT:) Objected to; the court takes judicial knowledge of the lakes, rivers—streams.

A. I should think there was.

74 Cross-examination.

By KNIGHT:

Q. Do you have any idea of the amount of power required to take the water out of the lake?

A. I have not.
Q. You know this water is pumped up?
A. Yes, sir.
Q. The lake is lower than the city is it not?
A. Yes, sir.

(BOUGHTON:) Object to these questions on the ground that they are immaterial, incompetent and irrelevant.
Overruled. Exception.

(NIGHT:) You do not know anything about the cost of pumping?
A. No, sir.

Same objection. Overruled. Exception.

A. Not positive. I do in a general way.
Q. Have you been engaged in the water business yourself?
A. No, sir.

Same objection. Overruled. Exception.

Q. Are you the owner of Varnums Addition?
A. Yes, sir.
Q. There is only one Varnums Addition?
A. That is all.
Q. Are you in the city permanently?
A. I still have a portion of Varnums addition.
Q. The streets in that addition are not graded are they?

(BOUGHTON:) Objected to for the reason it is immaterial and incompetent and leading.
(Question withdrawn.)

(KNIGHT:) Third street is not graded is it?

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial. The evidence shows they have a main extending along Third street.
Overruled. Exception.

A. No, sir, it is not.
(NIGHT:) Naturally, being the owner of considerable property in that district, you feel an interest in this case in securing an adjudication requiring the water company to make connections to all of that property?
A. No, sir, it does not influence me a particle.
Q. I didn't ask you whether it influenced you or not; I asked you whether you felt an interest in this matter?
A. No, sir, I do not.
Q. Is it not a fact that it would materiall*t* increase the value of your property if it was generally understood and determined that the water company could be compelled to make connections with those lots?
A. No, sir, that consideration never entered my mind.
Q. You mistake my question. Would it not as a matter of fact increase the value of your lots?

A. Repeat the question.

(BOUGHTON:) I object to that line of questioning for the reason that it does not appear but what all of the property in Varnum's Addition is now occupied by residences and they are supplied with water. In that case it would make no material difference.

Overruled. Exception.

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

(KNIGHT:) You own considerable property on First St. in Varnum's Addition don't you?

A. I own——

(BOUGHTON:) Object to the question as incompetent, irrelevant and immaterial, not bearing upon the issues involved.

Overruled. Exception.

A. I own seven (several) fractional lots there that I do not consider very valuable, not for residence properties, lots 2 to 9 inclusive; I think it is in Block 1—I consider them warehouse property.

(KNIGHT:) Warehouse property right along the railroad?

A. Yes, that is what I consider them best adapted to.

Q. You also own a tract of land called the reserve right north?

A. Yes.

Q. How large is that tract?

(BOUGHTON:) Object to the question and ask it be stricken from the record as incompetent, irrelevant and immaterial.

(REFEREE:) Motion denied. Exception.

(KNIGHT:) Is that part of Varnum's Addition?

(BOUGHTON:) Objected to for the same reason.

Overruled. Exception.

A. I don't know just how that would be considered. It is unplatted.

(KNIGHT:) I will ask you if that plat of ground is part of Varnum's Addition; you said you don't know exactly.

A. It would be if it was platted. The attorneys perhaps would know. That -as been puz-*el*ing me a little. It was marked reserved. I would like to find out myself.

Q. That is what we are trying to find out now.

A. I don't know how it would be considered.

Q. It constitutes part of your plat don't it?

A. Yes, sir.

Q. Marked reserved?

A. Yes, sir.

Q. You realize if an adjudication was made that you could not compel the company to make connections there, it might be less valuable than though they could be compelled to make connections with any part of it?

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

Overruled. Exception.

A. No, sir, I don't think it would make any difference in the value of the property; I don't think I will ask any less for the lots.

(KNIGHT:) That is not the question. You stick to that proposition that you don't think it would make any difference in the value?

A. Whether the Consumers Company charged for the tap or don't charge?

Q. No, whether the Consumers Co. could be compelled to make connections with the property in any way?

A. Extension of mains?

Q. Anyway. Making extension of mains where required. The question is whether you don't realize that if the Consumers
76 Company can be compelled to make connections with that property it would increase the value of the property, and if it should be decided that they cannot be compelled to make extensions there and make connections, that it would decrease the value of it?

(BOUGHTON:) I make the general objection to that it has been laid down by the Supreme Court of this State that whether or not this company or any other company can be compelled to perform its duty to the citizens is material to every individual and not particularly to any one individual owning property, and therefore it is improper, immaterial, irrelevant and not proper cross-examination.

Overruled. Exception.

(Question read.)

A. I want to be sure I understand you.

(KNIGHT:) Yes.

A. I didn't understand that the making of extensions was involved at all. I thought it was simply a tap question. I had not thought about the matter at all. I would say this, however, that if I was to plat that ground and wished to have the water extensions made and the Consumers Co.—I could not compel them to make these extensions—if the law was such I could make or compel them to make extensions, the land would be more valuable.

Q. You appreciate the fact that the question whether this company can be compelled to supply water there does affect the value of this land?

A. I would say this——

Q. Answer that and then make any explanation you wish.

(BOUGHTON:) I ask that that be stricken out because it has no bearing upon the question of the tap; that question is directly and exclusively in regard to the extension of mains.

(KNIGHT:) This question is developing the interest of this witness.

A. I will say in explanation that there is a four inch main right through Varnum's reserve.

(REFEREE:) Objection overruled. Exception.

A. Please repeat the question.

(Question read.)

A. Yes, in the sense I have just explained there.

(KNIGHT:) You say their mains extend through there. Would it in your judgment affect the value of these lands, whether or not the company can be compelled to supply taps and connections?

(BOUGHTON:) Objected to for the same reason.

(KNIGHT:) Considering the mains are already there, the question of whether or not the company can be compelled to supply taps, would that affect the value of the land?

Objection overruled. Exception.

A. No, sir, I don't——

Q. Would be just as valuable in one case as the other?

A. That is, I should not reduce the price of the lots in there.

Q. Do you know yourself what equipment for the use of water the house of Mr. Hatch has in it?

A. No, sir, I do not.

Q. Did you know at that time, or do you know, at that time, the 22nd day of March, what equipment it had in it?

A. No, sir, I do not.

Q. Don't know whether it has a toilet or bath equipment or not?

77 A. No, sir, I do not not of my own personal knowledge.

Q. You are interested in this case from a financial standpoint?

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. Yes, sir, I am.

Q. You are raising money to assist in the prosecution of this case?

A. Yes, sir.

(Witness excused.)

ALBERT L. HATCH, recalled for further examination by Mr. Boughton, testified as follows:

Q. You may state the nature of the tender which you made to the Consumers Co. on the 22nd of March connected with the demand, did you tender a check or cash?

A. I tendered them cash.

Q. State when it was that this check referred to last evening was tendered and for what purpose?

A. About the 1st day of January, 1909 for service for water supplied at the building I was living in at that time.

Q. Where they were then supplying water?

A. Yes, sir.

Q. To be a little more specific, did you, on the 22nd day of March, have any bath or toilet fixtures in your house?

A. No, sir.

Q. Have you any at this time?
A. No, sir.
Q. Is it your purpose to have any in the immediate future?
A. No, sir.
Q. Have you or did you have at that time more than two fausets?
A. No, sir.
Q. Is it your purpose to have more than two in the immediate future?
A. No, sir.

Cross-exam.

By KNIGHT:

Q. On the 22nd day of March it was your intention to equip that house for toilet was it not?
A. No, sir.
Q. It was also your purpose to fit it with connections for a bath was it not?
A. No, sir.
78 Q. You have put in plumbing connections for a toilet have you not?
A. No, sir.
Q. You have put in plumbing connections for a bath have you not?
A. No, sir.
Q. Do you mean to say that you have not got plumbing connections in for the reception of a bath?
A. No, sir.
Q. Or for toilet?
A. No, sir.
Q. Who put the plumbing into that house?
A. I did.
Q. Yourself?
A. Yes, sir.
Q. There are no connections made or arrangements made for the reception of connections for a bath or toilet?
A. No, sir.
Q. How many rooms, five rooms in that house?
A. Yes, sir.
Q. What are the rooms?
A. Kitchen, pantry, bath room, two bed rooms, two closets, living room.
Q. How came you to build that bath room?
A. I wished it built.
Q. You intended to build it on the 22nd day of March did you?
A. Yes, sir.
Q. Did you intend to use it for bath?
A. At some future time.
Q. When you built that room did you not put in connections there?
A. No, sir.

Q. Are there not connections there at the present time? I do not mean a bath tub, but is there not receptacles for a bath tub?
A. No, sir.
Q. Sewer pipe connections?
A. No, sir.
Q. Connections with a cess pool there?
A. No, sir.
Q. Have you got a cess pool?
A. No, sir.
Q. Not connected with sewer connections at all?
A. No, sir.
Q. Does the sewer extend into that district?
A. No, sir.

(Witness excused.)

(Plaintiff rests.)

79 GEORGE HARDING, called and sworn on behalf of the defendant and examined in chief by Mr. Knight, testified as follows:

Q. Your name, residence and occupation?
A. George Harding, Spokane, Washington; manager of the Consumers Co. in Cœur d'Alene.
Q. Do you know the plaintiff here, Mr. Albert L. Hatch?
A. I do.
Q. How long have you known him?
A. About three years.
Q. How long have you been manager of the Consumers Co.?
A. About 4½ years.
Q. Are you familiar with the location of its mains through Cœur d'Alene?
A. I am.
Q. Are you familiar with what is known as Krotzer's Addition?
A. I am.
Q. Also with what is known as Varnum's Addition?
A. I am.
Q. Have you ever had experience as an engineer?
A. I have.
Q. You are familiar with the location of the several mains belonging to this company?
A. I am.
Q. I want to ask you about what is the approximate cost per foot of extending mains through the district known as Cœur d'Alene, taking those parts known as Krotzer's Addition, Varnum's Addition, Sims' Addition and others.

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial.
Overruled. Exception.

A. Varies from $30.00 to $100.00 per 100 feet.

(KNIGHT:) Are you alaos familiar with the cost of making service connections?

A. I am.

Same objection. Overruled. Exception.

Q. What is the approximate cost of making service connections?
A. The approximate cost for a half inch connection is $7.00.
Q. For a three quarters?
A. Three quarters is $8.50.

(BOUGHTON:) I ask the answer be stricken out from the record as incompetent.

Overruled. Exception.

(KNIGHT:) I will ask you how you carry the accounts of service connections on the books of the defendant company?

(REED:) Objected to for the reason that it is incompetent, irrelevant and immaterial; does not make any difference how; it does not make any more difference how they carry the cost of making service connections than it does the cost of laying pipe or paying the salari-s of their help or running the pumping station of any other cost of the plant.

(KNIGHT:) We would like to put in this line of evidence without objection taken by counsel, and counsel may take a general objection and an exception to the ruling. We will understand that the same objection is made to the whole line of testimony; perfectly willing that it be so understood.

80 (REFEREE:) Objection overruled. Exception.

A. We carry the account of service connections as expense account and not as investment account.

(KNIGHT:) I will ask you whether or not as a matter of fact service connections create an additional liability on the part of your company by way of maintenance?

A. It certainly does.
Q. Does the extension of mains amount to an additional liability?
A. It certainly does.
Q. Maintenance account?
A. Yes, sir as well as in operation; also operation expenses, that is, flushing and caring for dead ends and such things as that.
Q. I hand you Plf's Ex. C, and ask you to state whether or not you recognize that as *as* the map that is sometimes circulated as the map of Cœur d'Alene?
A. I do.
Q. State whether or not you have water connections with all parts of that district covered by that map claiming to be portions of the city of Cœur d'Alene?
A. We have not.
Q. Have you on what is known as Stubbs Addition?
A. We have not.
Q. There are many other outlying portions there included within

this plat with which you have no water connections and no mains extending, are there not?

A. Yes, sir, there are.

Q. What would be the approximate cost to your company of extending the mains through all portions of that platted district included within that map?

A. I have never made an estimate; I would imagine it would be $200,000.00 or $300,000.00.

Q. What is the capital stock of your company?

A. $100,000.00.

Q. It would result in the bankruptcy of your company would it not?

A. It certainly would.

Q. State what it would cost to carry the mains to the outlying portions of what is called the Stubbs Addition alone?

A. Probably from $2,000.00 to $2,500.00.

Q. That is a sparsely settled district is it not?

A. I know of only one or two houses in the entire addition.

Q. You are familiar with the district known as the Krotzer Addition where this plaintiff lives and the location of your main along 3rd St.?

A. I am.

Q. What would be the approximate cost to make the service connection there including a corporation cock?

A. I should say about $10.00 or $12.00.

Q. What would it cost you approximately to furnish water for one month?

A. Probably that same place $1.50.

Q. Cost approximately $1.50 to furnish water there?

A. Approximately.

Q. Then if you were compelled to put in that service connection on the payment to you of $1.50 it would result in a net loss to you would it?

81 A. It would.

Q. Of $8.00 or $9.00?

A. Yes, sir, fully that or more.

Q. That is true generally of putting in service connections?

A. It is.

Q. All the water that you are able to furnish to the citizens of Cœur d'Alene is pumped into tanks and stand-pipes is it?

A. Pumped into a reservoir on Tubbs Hill.

Q. Do you have, during the entire year, an excess of water over and above the amount required to supply the customers you now have?

A. We were exceedingly short last year, and during the winter time we have ample supply; but during the summer season we were short last year and will be short this year.

Q. That results from excessive use of water in the summer time does it?

A. Yes, sir.

Q. The pumping capacity is about the same?

A. The pumping capacity should be able to supply the town and have a surplus. Excessive use and waste.

Q. This company has proceeded in supplying the residents of Cœur d'Alene according to the terms fixed by a certain water commission has it not?

A. They have.

Q. That water commission consisted of Judge Morgan, Mr. Elder and Mr. Bodner?

A. Yes, and Mr. Sullivan.

Q. You have read the copy of the report of the Water Commission annexed to our answer have you not?

A. I have.

Q. That is a correct copy of the findings reported by that Water Commission?

A. It is.

Q. Then the provision there as follows "All persons carrying or in any way obtaining water from a neighbor's faucet per month $1.50 fixed on August 14, 1907, that has been your rate for carrying water from neighbors' faucets since that time?

A. Since the date the rates went into effect.

Q. When did they go into effect?

A. October 1st, 1907.

Q. This plaintiff, you allege in your answer, was so indebted to you on the 22nd day of March, 1909 for water theretofore carried by him from a neighbor's faucet?

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial, has been stricken out by the Supreme Court. Overruled. Exception.

(KNIGHT:)

Q. Was he?

A. He certainly was.

(BOUGHTON:) I ask to have it stricken out. Motion denied. Exception.

(KNIGHT:) Do you know where the plaintiff lived at the time the water was supplied to him for which he was indebted to you on the 22nd day of March, 1909?

A. I do.

82 Objected to.

(KNIGHT:) You have the same exception all the way through.

(KNIGHT:) You have the same exxception all the way through.

(BOUGHTON:) If you will enter into a stipulation that all these proceedings—all this preceding examination is under the general objection and exception allowed to all of them.

(KNIGHT:) I will enter into a stipulation that you may object to every question I ask or that is asked and that you shall except.

(BOUGHTON:) I would like to have the record show we object to

every question you ask upon matters ruled upon by the Supreme Court.

Overruled. Exception.

(KNIGHT:) All right, I will stipulate every question I ask upon the portions of our answer stricken out by the Supreme Court shall be deemed objected to, the objection overruled and exceptions entered.

A. I do.
Q. Where did he live?
A. The southwest corner of First and Summit streets.
Q. In what is known as Varnum's Addition?
A. In what is known as Varnum's Addition.
Q. Were the streets on either side of that property graded?
A. They were not.
Q. You had no mains in front of that property did you?
A. We had not.
Q. Did you present bills for that service?
A. We did monthly.
Q. You also know where lot 14 of Krotzer's Addition is where this plaintiff now lives?
A. I do.
Q. I will ask you whether or not he has paid for the water that he used in plastering his house.
A. He did not.
Q. Did he ever offer to pay for it?
A. He did not.
Q. Has he offered to pay or has he paid for water he has used on that lot at that time and since he has moved there.
A. He has not.
Q. You have also read a copy of the ordinance in which—under which you were operating attached to this answer?
A. I have.
Q. Do you know whether that is a true and correct copy of that ordinance?
A. I do.
Q. It is is it?
A. It is.
Q. Did you have a conversation on or about the 20th or 22nd of March with this plaintiff in regard to furnishing water on lot 14?
A. I was in the office the time he made his tender.
Q. Did he describe at that time the manner of house he was building?
A. He did not.
Q. Or say what amount of water he was going to use?
A. He did not.
Q. Did he say whether he had a bath or toilet?
A. No, sir.
83 Q. Or was going to have a bath or toilet?
A. He did not.
Q. Or whether he was going to water a lawn?

A. No, sir, he did not.

Q. I will ask you whether your experience with this plaintiff prior to the 22nd of March, 1909, led you to believe that it was not probable that he would pay regularly for water if water should be supplied him?

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. From his past record we judged that it would certainly not be profitable to supply water to him.

(KNIGHT:)

Q. Judged that he would not pay his bills?

A. Judging from his record in the past I judged that we could not collect in the future.

Q. Did you have any assurance that you would ever receive more from him than $1.50 that he tendered to you that day?

A. No, sir, we didn't have any assurance.

Q. Did you feel that you would or would not?

A. I rather felt that we would not.

Q. You allege in your answer that on or about the first day of April, 1909, you made the offer to the plaintiff in writing a copy of which is set out on page 6 of your answer, is that correct.

A. It is.

Q. Did the plaintiff ever make any reply to that?

A. I believe he made a conditional reply if I remember right.

Q. In writing or do you remember?

A. I don't believe he made it in writing although he may have done so to one of the boys in the office.

Q. One of the boys in the office?

A. Yes, sir.

Q. Which one?

A. Mr. Hahn probably.

Q. Mr. Hahn is in town is he?

A. Will be shortly.

Q. Since that date were you willing and ready to supply him on those terms and would have supplied him if he had complied with them?

A. We would.

Q. You allege in your affirmative answer that the Commissioners fixed your water rate,—commission was established—that the rates were established and determined by — appointed, two by the city of Cœur d'Alene and two by the Consumers Co. in the matter provided by law; is that true?

A. Yes, sir, it is.

Q. And they met in session and fixed the rates as set out in this answer?

A. Yes, they did.

Q. That includes the rates for putting in service connections?

A. It does.

Q. Service connections, mains, making connections as requested by this plaintiff does it not?

A. It does.

84 Q. You have ever since the first of October, 1907, the time these rates went into effect, complied with the terms and conformed to the rates have you not?

A. We have.

Q. You have alleged in your answer that the profits which you derive from furnishing residents of this city with water does not exceed the sum of $4.50 per annum, profits of furnishing?

A. That is about correct.

Q. You have carefully estimated the cost of this plant, the necessary equipment, the expenses of maintenance?

A. I have.

Q. And determined that that is about the amount you derive profit?

A. It is.

Q. Then the expense of putting in the service connection as demanded by the plaintiff here would result in an expense to you over and above the profit you could make out of him annually for furnishing water would it?

A. Yes, sir.

Q. It would be more than double your annual profit would it?

A. It would average about that.

Q. About double your annual profits?

A. Yes, sir.

Q. You allege here that the city of Cœur d'Alene assumes governmental jurisdiction over an area extending 2½ miles by 3 miles in extent. Do you know whether that is about correct?

A. I believe that is approximately correct.

Q. There are many outlying districts or additions that are not inhabited practically at all are there not?

A. There are many.

Q. State whether or not demands have ever been made upon you to extend the water mains to those additions for the purpose of supplying that real estate?

A. Yes, frequently.

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial.

Over ruled. Exception.

(KNIGHT:) If you were to comply with those requests made by different real estate men who made them, what they pretend to be additions to the city of Cœur d'Alene, intending to sell off lots, it would result in serious financial loss to your company would it?

(BOUGHTON:) Objected to as incompetent, irrelevant and immaterial and suggestive, leading, not bearing upon the issues involved in this case.

(REFEREE:) It is leading.

(KNIGHT:) I withdraw that. State whether or not the extension

of your mains and making connections with outlying additions—pretending to be additions to the city of Cœur d'Alene, would result in large financial loss to your company?

Same objection. Over ruled. Exception.

A. It would certainly.

Q. Would it or would it not result in the expenditure of more money than your company is capitalized for?

Same objection. Over ruled. Exception.

A. It certainly would.

85 Q. If you should be compelled by the order of the Supreme Court of this State to furnish water to the several pretended additions contained within this map and all the various portions of those additions, would or would it not amount to a confiscation of your property and franchises?

(REED:) Objected to for the reason that it is incompetent, irrelevant and immaterial, suggestive and leading and for the further reason that the question of supplying water for outlying districts is not involved in this case; the only question involved is furnishing a tap to this plaintiff and furnishing him water from a main already extended in front of his premises.

Over ruled. Exception.

(Question read.)

A. It would.

(REED:) I ask to have the answer stricken from the record.

Denied. Exception.

(KNIGHT:) Would it or would it not result in the insolvency of your company?

Same objection. Same ruling. Exception.

A. It would.

Q. I understand you have not capital enough at this present time to undertake these improvements and successfully carry them out?

Same objection. Overruled. Exception.

A. We certainly have not.

Q. Plaintiff in his affidavit here set up a proposition on page 4 called water regulation No. 1 which he says your company offered plaintiff to sign. That contains three several propositions as I understand it, under any of the following conditions viz: First, in consideration of $8.50 cash paid in advance; second, in consideration of a deposit of $15.00 paid in advance, the same to be refunded when tap is taken out less cost of actual labor and one corporation cock; third, in consideration of $40.00 cash paid in advance the same to apply on payment for water used from said tap?

A. We make service connections under any one of those three conditions.

Q. It means that you offer to make service connection under anyone of those three conditions?
A. Yes, sir.
Q. This last proposition, $40.00 paid in advance, that would practically make you assume the cost of putting in that service tap provided he would agree to purchase from you $40.00 worth of water at your established rates would it not?
A. It would.
Q. At that time you were willing and are now willing to comply with that condition and furnish him that tap provided he will pay you $40.00 cash to give you an absolute guarantee that you will be paid?

(REED:) Objected to as incompetent, irrelevant and immaterial, leading, suggestive, the regulation itself does not say anything about a guarantee of $40.00.
(REFEREE:) It is open to the objection of being leading.

(KNIGHT:) I withdraw that. Are you willing now, and have you at all times since the 22nd of March, 1909, been willing
86 to make this service connection on the investment with you of $40.00 cash?

Objected to.

Q. —to be applied in payment of water at the established rates established by the water commissioners?

Objected to. Overruled. Exception.

A. We have been willing to make the tap and apply the $40.00 on the water.
Q. Prior to that or at any time?
A. Prior to that.

Cross-examination.

By REED:

Q. You have been manager of the Consumers Co. about 4½ years?
A. I have.
Q. You say you are an engineer of some experience?
A. I am.
Q. Have you a certificate from any licensed engineering school?
A. From the University of California.
Q. Engineering department of the University of California?
A. Yes, sir.
Q. You have worked as an engineer have you?
A. I have.
Q. In other capacities than as engineer for the Consumers Co.?
A. I have.
Q. Where and when?

(KNIGHT:) Objected to as not proper cross-examination. Overruled. Exception.

A. I was engineer for the California Water Co. (?) in San Francisco for about three years; I was engineer for a moning company in Montana about a year and a half.

Q. How long have you lived in Cœur d'Alene?

A. Since October 15th, 190— four years and a half I think.

Q. Have you acted as manager of the Consumers Co. ever since they have been organized?

A. I have not.

Q. How long had they been in operation before you came here as manager?

A. They began operating the first of December, 1903.

Q. You came here in 1904?

A. I did.

Q. What time?

A. October 15th.

Q. You say it costs approximately $30.00 to $100.00 per 100 feet for extending mains?

A. It does.

Q. In what portion of the city does it cost $30.00 per 100 feet?

A. It all depends on the conditions. I could not answer that so as to give you any information.

Q When you said from $30.00 to $100.00 per 100 feet what sized mains did you have in mind?

A. From 4 inches to our largest size?

Q. What is the largest size?

A. From 4 to 10 inches in Cœur d'Alene.

87 Q. 4 inch mains cost you about $30.00 per 100 feet and 10 inch mains cost you about $100.00 per 100 feet?

A. Approximately.

Q. That is a fair average all over the city of Cœur d'Alene is it?

A. I think it is.

Q. Including the Tubbs addition which you speak of?

A. We have never had any experience in Tubbs Addition. I would estimate from the appearance of the rock that it would exceed the amount by a large sum.

Q. Then Tubbs Addition is a rock pile is it?

A. Apparently.

(KNIGHT:) I object to any slurs being cast on Stubbs Addition.

(REED:) As a matter of fact the cost of putting in mains on Tubbs Addition would — probably several times as great as it would in any other portion of the city would it not?

A. Probably so.

Q. You have never been asked to put in mains over in Tubbs Addition have you?

A. We have.

Q. Whereabouts?

A. Austin Corbin's house on the point; it is just adjacent to Tubbs Addition; it would be necessary to extend through Tubbs Addition; I don't think he lives on Tubbs Addition.

Q. Did you make an estimate of the cost then?
A. I did.
Q. Is that in the city limits where his house is built?

(KNIGHT:) Objected to as calling for a conclusion.
Overruled.

(REED:) Is it in the city limits?
A. They say so, I don't know.
Q. The entire Tubbs Addition?
A. It is not in Tubbs Addition I believe.
Q. What sized main have you out on 3rd St. in front of Kotzer's Addition?
A. 4 inch.
Q. How long ago did you lay that main out there?
A. Approximately 2 years, probably a little more.
Q. $30.00 per 100 feet for laying 4 inch pipe, is that just the cost of the pipe or cost of putting it in?
A. Cost of laying it.
Q. How deep do you lay pipes?

(KNIGHT:) Objected to as immaterial.
Overruled. Exception.
A. Not less than 3½ feet.

REED:

Q. What is the nature of the soil in Krotzer's Addition, in fact all of the north end Cœur d'Alene?
A. It varies.
Q. As to whether or not it is easy to excavate easy digging?
A. It depends upon the time of the year too.
Q. There is no rock there?
A. No rock.
Q. Does not require any blasting?
A. No, no blasting excepting when it is frozen.
Q. As a matter of fact you have water mains on all sides of Kroter's Addition have you not?
A. We have.
88. Q. How long ago was the main laid on the north side of Krotzer's Addition?
A. A little more than two years ago if I remember right.
Q. On the west side?
A. About four years and a half ago.
Q. On the south *a*ide?
A. We have no main on the south side.
Q. There is no main on Miller St.?
A. There is a main on Miller St. in Varnum's Addition but not in Krotzer's Addition.
Q. You say you carry the cost of the taps as an expense account?
A. We do.
Q. And that is figured in as portion of the cost of putting in the main?
A. It certainly is not.

Q. You say the cost of a tap is approximately $8.50 for a ¾ and $7.50 for a half inch?

A. $7.00 approximately.

Q. What do you mean by approximately, you mean it may cost the defendant more than $8.50 for a three quarter inch?

A. It is a different matter to tell exactly because we include in the expense——

Q. I am asking you can you put in a tap for the defendant at less than $8.50 for a ¾ inch tap?

A. At times.

Q. As low as $6.50?

A. Under certain conditions probably.

Q. As low as $5.50?

A. I would hardly think as low as $5.50; that is, under certain conditions we might do so.

Q. Do you have any contract with any concern in this town to put in taps for you?

A. We did.

Q. What did you pay them per tap?

A. $5.00 apiece the way they tapped the main, but they had to be done all over again.

Q. You are very familiar with the territory in Crotzer's Addition are you not?

A. Fairly so.

Q. You put in some taps out there?

A. We have.

Q. You say the cost of putting in taps out there is from $10.00 to $12.00?

A. I would imagine it would be in front of Tatche's house.

Q. Have you put in any taps right in that immediate vicinity?

A. We have.

Q. What did it cost you?

A. I don't remember.

Q. You carry it as an expense account do you?

A. Yes, sir.

Q. Have you got it on your book?

A. I have not got it on my person.

Q. Will your books show what the cost is to put in taps out there?

A. I think so.

89 Q. Will you produce the books?

(KNIGHT:) You have a way to get the books if you want them.

(REFEREE:) You won't produce them without that?

(KNIGHT:) Yes, I think so. Do you want us to get them right now?

(REFEREE:) No.

(REED:) As a matter of fact have you ever put in any tap out there that cost as high as $10.00 or $12.00 for making the tap?

A. I don't recollect, but the cost of a tap as made in front of your residence and what used to be Mr. Boughton's residence, is not completed yet; that street has yet to be graded and it is another item

to be added to it when that street is graded and the taps have to be lowered accordingly and we never charge the property owner for the lowering of the tap.

Q. You figure in the cost the cost of changing do you?

A. We do, naturally that helps to bring the average up.

Q. I am asking you if you make that part of your costs, add that up in your books before it is made?

A. Not before it is made. That helps to make the average you asked me about.

Q. You say you don't make any charge when you lower?

A. Not for that portion of the street—not for the portion of the tap in the street; but where the tap is lowered inside of the curb, if the property owner wants his tap lowered we charge him for doing it. We prefer to leave it alone and let him lower it himself.

Q. You carry, you say, an expense account for the taps?

A. We do not consider the taps as part of our investment.

Q. But you did state on direct examination that you charged it up to expense account didn't you?

A. Yes, sir.

Q. You say in all instances it is charged up to expense account?

A. Yes, sir.

Q. You have been charging for taps have you not to consumers, consumers have been paying for taps?

(KNIGHT:) They have followed the findings of the water commissioners.

(REED:) Before that time did you charge for taps?

A. We did.

Q. Do you know anything about book-keeping?

A. I think I do.

Q. If the consumer pays for the tap why do you charge it up to expense account?

A. Because we cannot consistently carry it as investment account. It is not capital account.

Q. There is no investment at all is there?

A. No, sir we don't count it investment.

Q. Do you enter it up in your books as expense account?

A. We do.

Q. You enter it as expense account notwithstanding the purchaser pays for the tap?

A. Expe*b*se account.

Q. Do you give the expense account credit?

A. We charge the expense account with that.

90 Q. There is not any investment at all is there?

A. No, sir we don't count it investment.

Q. What fund does that go into?

A. That is an expense account by itself.

Q. What do you do with that money?

A. Which money?

Q. The money you get in for taps?

A. It helps lessen our expenses.

Q. Is it part of your plant?

A. It is not.
Q. It is not part of your plant. Does the consumer own it?
A. Yes, sir.
Q. You have absolute control of it don't you?
A. We reserve the right to use it.
Q. You have control of it don't you?
A. We do not care to control the tap; all we care to do is to control the shut-off which I think the law gives us the right to do.
Q. And has the consumer the right to dig up the tap and take it out?

(KNIGHT:) Objected to as a question of law; witness has qualified as a bookkeeper and enginee- and not as a lawyer.
Overruled. Exception.

(REED:) Do you know?
A. I didn't hear the question.
(Question read.)
A. If he would not disturbe our system we would not object—or cause any loss of water.
Q. You have the control of the streets for that purpose? Don't you have a franchise?

(KNIGHT:) Objected to as a question of law.
(REFEREE:) Answer the question if you can.
Exception.

A. We have a franchise which permits us to lay mains and necessary fittings and make service connections if we desire.

(REED:)

Q. I don't think you have told us yet why it is—what there is about that soil up there in that addition, Krotzer's Addition, that makes it cost $10.00 or $12.00 to put in a tap——
A. One reason is that the main is on the east side of the street; a second reason is the street is more or less filled with stumps; a third reason is that the ground seems to be harder to dig than in some localities we have tried to dig, more gravelly.
Q. Harder at all seasons of the year?
A. Seems to be.
Q. You have put in taps there different seasons of the year have you?
A. Not exactly at that place.
Q. As a matter of fact have you any reason to believe it would cost more to put in a tap there than it would any other part?
A. I have.
Q. You have an addition have you not right across from Krotzer's Addition, have you not Mr. Harding?
A. I have not an addition, no sir.
Q. Didn't you plat a lot there?
A. I once platted an addition but I sold all I had.
91 Q. You say that one of the reasons why it cost more to put in a tap at Krotzer's Addition than any other place is because the main is on the east side?

A. I say on the west side—costs more on the west side of 3rd St. because the main is on the east side of the street.

Q. Your mains are all on the east side of the street are they not?

A. As far as possible.

Q. In ever- case where you put in a tap for a consumer on the west side of the street it costs more than it does on the east side of the street?

A. Not always.

Q. You mean to say it would not cost any more to put in 50 feet of pipe than 25?

A. In the 25 feet you may encounter a stump or something like that.

Q. Have you ever encountered any stumps in putting in taps up in Krotzer's Addition?

A. I believe so.

Q. Where?

A. I am not exactly certain which tap it was, but I remember of hearing some of the boys mention having dug out stumps.

Q. Do you know where it was?

A. Not positively.

Q. You are absolutely sure that they did mention th-t they had dug out some stumps there in putting in taps?

A. Yes, I am certain.

Q. Can you name any addition in the city where the boys said they dug out stumps?

A. It is the same in all additions.

Q. I will ask you if you can name any other certain addition?

A. I can.

Q. What addition?

A. Sims' Addition.

Q. Any other addition?

A. Taylor's Addition.

Q. Any other?

A. Woodlawn.

Q. Any others?

A. Sanders.

Q. Any other?

A. Glenmore.

Q. Any other?

A. Lake Shore.

Q. Any other?

A. Yes, a number of others.

Q. Name them if you can. If you cannot say so.

A. I can if you wish me to.

Q. Name them.

A. Lacross, Forest Heights.

Q. Any other?

A. Taylor's Park, Columbus Park.

Q. Any other?

A. Sherman Addition.

Q. Others?

A. Minnick's Addition. Tubb's Addition.
92 Q. Any others?
A. Kaesmeyer's Addition.
Q. Name them all.

(KNIGHT:) Objected to as incompetent.
(REFEREE:) That is sufficient I think.
(BOUGHTON:) We had special reasons——
(REFEREE:) Let him answer it.

(REED:) I will ask you if you pretend to say here that you can remember specifically of having heard the boys mention that they had dug out stumps in putting taps in every one of the additions you have mentioned?
A. I didn't say that.
Q. That is what I asked you.
A. I said in Krotzer's Addition.
Q. I asked you if you could name any additions in which you could remember of the boys saying that they had dug out stumps in putting in taps.
A. I would like to correct it; I misunderstood the question.
Q. How do you want it?
A. I personally have seen stumps in this additions where they had dug them out.
Q. Where they have had to take them out to put in taps?
A. Yes, or make the main ditch.
Q. Did you name the rest of them? We would like to get them all.

(KNIGHT:) I think this is unreasonable.
(REFEREE:) Let him answer.

A. I don't know whether these are additions or not but they are so called additions; O'Brien's Additions.

REED:

Q. Several of those additions?
A. Yes, all of them, practically all.
Q. Spokane Addition?
A. I have not Spokane Addition located in my mind; I would not say as to that.

(ELDER:) Half way to Spokane.

(REED:) Is there any Springwater Addition?
A. I could not say as to Springwater Addition because we have only made one extension on that addition that is only recently.
Q. Williams Park Addition, any stumps there?
A. Williams Park?

(KNIGHT:) I cannot see what possible relevancy this can have.
(REFEREE:) He may answer.

A. I am not familiar with Williams Park Addition.
(REED:) You say it would cost from $200,000.00 to $300,000.00

to extend your mains to all of the Additions to the city over and above where you already have them extended.

(KNIGHT:) He didn't say so. He said all the additions that appear on the plat you have here.

(REFEREE:) Let the witness correct it of he misquotes him.

(Question read.)

(REFEREE:) Witness I think is able to protect himself.

(REED:) Did you say it Mr. Harding?

A. I should say at least that amount; that is approximate of course.

Q. How many of those additions are there do you know?

93 A. No, sir.

Q. You are familiar with the map, Pl'ffs' Ex. C, are you not?

A. Yes, sir.

Q. How many of those additions are there on this map that you have not mains in?

A. I cannot say without counting them.

Q. Name them; point them out—mark them some way or other so we will know how many there are where you have not water mains; call them by name.

(KNIGHT:) Objected to as entirely immaterial.

Overruled. Exception.

A. College Addition, Roach Park, Williams Park, East End Addition, Stettler's Addition, Tubb's Addition; there may be others; there are many others that we just have a small extension—short extension.

(REED:)

Q. Now you are sure Mr. Harding that you have no water mains upon the additions which you have just named?

A. I am quite certain unless they have been extended in the last few days.

Q. Didn't you testify a few moments ago on cross-examination that you had mains in Tubb's Addition?

A. We have no mains in Tubb's Addition.

Q. You think it would cost approximately $200,000 or $300,000 to put mains in the additions you have mentioned?

(KNIGHT:) That is not what witness said.

(REFEREE:)Let him answer.

(KNIGHT:) He said extending through the different streets.

A. I said it would cost approximately $200,000.00 or $300,000.00 to extend the mains on the streets that were shown on that map and designated as being in the city limits; that is just approximate it may be more and maybe less.

(REED:)

Q. What did it cost to put in the mains that you already have in the city?

(KNIGHT:) Objected to as immaterial. Overruled. Exception.

(REED:) Mains and supply pipes?
A. I cannot say off-hand.
Q. How much have you got invested?

(KNIGHT:) Objected to as not material in any way and it is not in the pleadings.
Overruled. Exception.

A. I cannot say offhand.
(REED:) Approximately.
A. You ask in water mains don't you?
Q. Water mains and supply pipes.
A. I cannot say offhand.
Q. How much have you got invested all told?
A. I cannot tell you that.
Q. Can you tell approximately?
A. No, sir, not exactly—not approximately.
Q. $50,000.00?
A. More than that.
Q. $100,000.00?
A. I cannot say definitely.
Q. Maybe a little more than $100,000.00?
A. Maybe.

94 Q. May be a little less than $100,000.00. Do you know anything about what your pumping station is estimated at?

(KNIGHT:) Objected to; this is one thing I do not think ought to be permitted in this case; it is not involved, I don't think counsel should be permitted to make this fishing expedition to find out something that is not in the case. I would not object to anything reasonable. There is no question involved here as to whether or not the company is making a profit over and above; we admit it is making a profit. The only thing that counsel can be attempting to investigate is something for ulterior purposes.
(REFEREE:) Let him answer the question.
(Question read.)
(KNIGHT:) Objected to as not proper cross-examination.
Overruled. Exception.
(Discussion.)

A. Cost of the pumping station alone?
(Question read.)
A. Not offhand.
(REED:) Do you know anything about it at all?
A. Not as to cost.
Q. $5000.00?
A. More than that.
Q. $10,000.00
A. More than that.
Q. $20,000.00?
A. Probably a little more than that.
Q. $25,000.00?

A. Probably in that vicinity.
Q. The balance, does that include reservoir?
A. It does.
Q. The balance of $75,000.00 or perhaps less or perhaps a trifle more, is invested in mains and supply pipes?
A. It is; I don't say entirely; most of it.
Q. You stated that you have a profit of only $4.50 per tap for each consumer over and above cost of furnishing water?
A. Approximately.
Q. What do you mean by approximately? Have you ever figured it out
A. Yes, roughly.
Q. You would not make it as high as $5.00 on an average?
A. No, sir, I don't think so.
Q. About 4.75 would it make?
A. I don't think it would run that high.
Q. How many consumers have you?
A. I cannot tell you exactly.
Q. Can you tell me approximately?
A. They vary so much from time to time.
Q. The books will show will they?
A. Yes, sir.
Q. Will you produce the books and tell us how many consumers you have?

(KNIGHT:) Unless you honor calls for the books for that purpose we will not produce them. They are not material in any way.
(REFEREE:) It seems to me that that is a proper question.
95 (KNIGHT:) He can ask the question if he wants to, but we don't want to bring the books up here and put the record in the shape it would be necessary for it to be for the purpose of disclosing to Mr. Reed the condition of our business or satisfying his spleen in any way.
(REFEREE:) You have offered evidence here as to the average
(KNIGHT:) Yes, sir. He can ask witness to examine the books. profits on each consumers.
(REED:) Will you examine the books and tell me how many consumers there are
A. I will.

(REFEREE:) I do not understand they are seeking any further than that.
(BOUGHTON:) We are not after any information that does not bear directly on this case.
(KNIGHT:) We are willing to give any information that bears on this case.

(REED:) You could not say approximately at the present time?
A. I should say approximately 1500 or 1600, but I might miss it 200. It would not be 200 more because the population of Cœur d'Alene is flux-uating.
Q. Would it be 200 less?
A. I hardly think it would be 200 less.

Q. Might be 1600 consumers?
A. Of course I said that 1500 was what I thought.
Q. What is the average if you know per tap monthly from all of your consumers?
A. I never made an estimate on that basis.
Q. Never figured it up at all?
A. No, sir.
Q. What is the total income that you have from your consumers, or what does it average monthly?

(KNIGHT:) Objected to as not material.
Overruled. Exception.

A. I cannot state exactly.
(REED:) I didn't ask you to be exact; approximately.
A. I cannot give you an approximate statement.
Q. Would it amount to $5000.00

(KNIGHT:) Counsel has in his possession at the present time sufficient knowledge to estimate it as well as witness. You are not inquiring the cost, you are inquiring the income.
(REED:) For water monthly.
(KNIGHT:) 1500 multiplied by the average.

A. I have an accountant; I have a bookkeeper.
(REED:) Have you ever looked at the books?
A. Yes, sir.
Q. Do you know anything about the business the Consumers Co. is doing at all?
A. Yes, sir.
Q. Do you think you get in $10,000.00 a month from the consumers?
A. I wish we did.
Q. For water?
A. No, sir.
Q. Do you get $2,000.00?
96 A. I should say approximately.
Q. Approximately $2,000.00.
A. No, a little more than that probably.
Q. How much.
A. Probably $2200.00 something like that or $2300.00.
Q. You would not swear you do not get as high as $5000.00 though would you?
A. You bet I would.
Q. You would not swear that you do not get in as high as $4000.00?
A. You bet I would.
Q. $3000.00?
A. I would.
Q. $2500.00
A. We take in as much as that sometimes during the lawn season.
Q. Will your income per tap average as much as $2.00 per month?

A. No, sir.
Q. Will it average $1.75?
A. You can easily determine the average.
Q. I am asking you.
A. I will have to figure it out for you; probably average between $1.60 and $1.75. At times of year not that much. It all depends on the number of houses occupied. It is fluctuating.
Q. You say it costs approximitely $1.50 a month to furnish water in the Krotzer's Addition per tap?
A. It costs approximately more than that to furnish water one month.
Q. I don't understand.
A. It costs approximately more than that to furnish water one month in Krotzer's addition.
Q. Have you got any customers you furnish one month's water to?
A. Yes, sir.
Q. Who are they?
A. I could not mention their names.
Q. You only furnish one month?
A. We have sold water to people for less than a month.
Q. Where you have a tap?
A. Yes, where we have a tap.
Q. And then no further income from that particular tap?
A. No further income, no, sir.
Q. In Krotzer's Addition
A. I would say approximately.
Q. Didn't you confine yourself to Krotzer's Addition when you said it cost $1.50 a month to furnish water there?
A. Yes, sir, on that particular addition.
Q. Is that the fact?
A. I said it would cost on an average more than $1.50 to furnish water for one month.
Q. I am asking you if you have furnished water for just one month in Krotzer's Addition so you have any way of getting at it?
A. Not to my knowledge.
Q. Then when you made that statement it was just guess work was it not? If you have not had any such customers how do you know anything about what it would cost?
A. I estimated it.
97 Q. Just estimated. What did you figure on to estimate?
A. Well, it costs more to deliver water to Krotzer's Addition than it does to King's Addition.
Q. Why?
A. Because you have to have additional mains; it costs that much more for a main out there.
Q. The 4 inch main costs the same as 4 inch main in King's?
A. But after piping the water to King's Addition we have yet to extend the main out to Krotzer's Addition.
Q. But you have got a main there have you not?
A. But when you take into consideration the interest on that in-

vestment that makes the cost greater. We cannot furnish water in the outlying districts for what we can in town.

Q. You can furnish it for just the same when you get a main out there can't you?

A. No, sir, we cannot.

Q. Why?

A. Because of leaks on the way, because of depreciation of the main, by the interest on the investment, because of the extra trouble or cost of going out there and turning on and turning off water, the increased expenses collecting accounts and for the reason the taps in the outlying districts are vacant and not used for much of the time whereas in town they are nearly always in use, for the reason that in these outlying districts we have had a great deal of flushing to keep the water pure because the houses are scattered far apart; because when we do have a leak it is sometime before we can get it shut off and we lose considerable water thereby, and besides it being a great deal higher elevation then Cœur d'Alene. Cœur d'Alene Addition is some 60 or 70 feet higher in elevation.

Q. Do you know about how many houses in town have a bath installed?

A. No, sir.

Q. Do you know in how many houses in town a toilet is installed?

A. No, sir.

Q. Do you know anything about how many of your customers have horses?

A. No, sir.

Q. Do you know anything about how many of your customers have cows?

A. No, sir.

Q. Do you know anything about how many of you- customers have more than two—we will say—toilet basin and lavatory?

A. No, sir.

Q. Or sink?

A. No, sir.

Q. What is the minimum charge for water?

A. The minimum charge for water is $1.50 per month.

Q. Do you know anything about what you get per month from hotels?

A. We don't get anything from the Idaho.

Q. Don't charge them for water?

A. We certainly do.

Q. I am asking what you charge.

A. Hotel Idaho pays approximately $18.00. They have a meter.

Q. What do you get from the Normile Hotel?

(KNIGHT:) I certainly think that is immaterial; I know it is getting tedious. I object to it as incompetent, irrelevant and immaterial. There might be a hundred reasons why the Normile
98 was getting special rates.

(REFEREE:) It seems to me that in view of the statements made here as to profits he would have the right to test witnesse's knowledge and the accuracy of his answers.

Exception.

A. I could not say; they have a meter, I could not say about their average; they too we have a difficult time to collect. Hotels at the present time are very hard pressed.

Q. You charge it up to them?

(KNIGHT:) I have no serious objection to this except that it is taking my time and I am hungry. If your honor thinks it is pertinent, proceed.

(REFEREE:) I think it would be well to limit it as far as counsel feel that they can.

(BOUGHTON:) If witness would answer our inquiry of the gross income from the water supplied the citizens of Cœur d'Alene we could do it.

A. I have given it to you.

(KNIGHT:) He said $2300.00 a month.

(REFEREE:) Proceed.

(REED:) The cost of supplying water in all the additions where you have mains, which additions are located as far out as Krotzers Addition is approximately $1.50 a month or more to furnish the water to them?

A. I could not say as to the cost. In some additions there are more dead-beats than others; in some additions we cannot collect at all; where there are no taps we have no way, except by law, to collect from people who carry water. It is a difficult matter; the further you get out in the suburbs the more difficult it is to collect I find. The loss is greater.

Q. State whether or not it costs more to furnish water out in East Lacross than in Krotzer's Addition?

A. It does.

Q. It costs more?

A. It does.

Q. What does it cost per month out there to furnish it?

A. I could not say.

Q. Could you not estimate it?

A. It costs more than it does in Krotzer's; it would be hard to estimate.

Q. Does it cost $1.75 out there do you think?

A. Yes; it might cost more.

Q. And the average is about $1.60 that you get?

A. How is that?

Q. You are getting in about an average of $1.60?

A. Yes, sir.

Q. Costs you about $1.75?

A. Yes, in outlying districts it costs more than we get to supply water in some places.

Q. Confine it to East Lacross.

A. I cannot say without figuring.

Q. How many additions are there in the city where you are furnishing water that it costs you more than $1.50 a month to furnish the water?

99 A. I could not say that without counting them. It is a difficult matter to tell offhand without a great deal of figuring.

Q. Are there more than one or two additions?

A. State the question again.

(Question read.)

A. There are several I am sure of.

Q. Can you name them?

A. Those additions lying as high or at a greater altitude and as far north as Krotzer's Addition would surely cost more; the Sims Addition should cost more than Krotzer's Addition.

(Witness excused.)

(Taking of testimony adjourned until 8 o'clock p. m.)

(Taking of testimony resumed pursuant to adjournment.)

GEORGE HARDING, recalled for further cross-examination testified as follows:

Q. Did you bring up any memoranda or data to show how many consumers you have now?

A. I did.

Q. How many have you?

A. We have 1400 taps. I overestimated it when I averaged it for the reason that I included a lot that were carriers only and had no taps.

Q. How many are carrying water?

A. I didn't make an estimate of that, but there are approximately 100 or 150, something like that.

Q. Carrying water?

A. Yes, sir.

Q. From whom you receive the minimum fee?

A. Oh, we charge it but in many cases we cannot collect it.

Q. You collect it in all cases where you can?

A. I suppose in say one half or two thirds of the cases we can collect; we attempt to collect but it is a difficult matter.

Q. What are the average monthly receipts from that 1410 consumers?

A. That is another matter I overestimated. During the month of March it was 2329.85.

Q. Do you know what it was for the month of April?

A. I just computed it for that one month. It was quite a long task and I computed it for that one month alone.

Q. Do you know whether there was more in April than in March or not?

A. I imagine there would be a little because the town is growing right along; we put in probably in the neighborhood of from one to two taps a week.

Q. That $2329.85 is that the total from that 1410 consumers or is that the amount you——

A. That is the business done; that does not represent the cash

receipts, that is the actual business done; it does not represent the cash receipts; it does not take into consideration the loss in collecting.

Q. 2329.85 was the total amount due you from the 1410 100 taps?

A. I won't say 1410 taps.

Q. How many were there then?

A. I said we had some carriers in the city.

Q. This sum represents the total amount due you for the taps and also from those who carried water?

A. That is the idea, during the month.

Q. You say there are approximately 100 or 150 *a*ho carry?

A. I cannot give you an exact estimate.

Q. It would certainly amount to 1500 would it not including those who carry?

A. I should say so roughly; it is a hard matter to make these estimates. I could have gotten that data but I didn't think you wanted it.

Q. I understood you to say the $2329.85 is the total amount due you for the month of March for approximately 1500 taps—1500 taps and those who carry water?

A. Yes, approximately; I would not say 1500 taps.

Q. 1410 taps and those who carried water, 1500 consumers?

A. Out of all those taps there are some which are vacant. Those represent costs and don't represent consumers.

Q. You don't know how many were vacant?

A. I did not ascertain that.

Q. You say you run short of water during the summer time?

A. Last summer we had a total failure. We had to rebate a great many consumers in the north part of town; it was a long continued dry summer.

Q. Did you deliver any water outside the city limits?

A. Yes, there is some.

Q. How much?

A. That is a difficult matter to determine.

Q. How many consumers have you outside of the city limits?

(KNIGHT:) Objected to as immaterial. It cannot be material because there is nothing in the franchise that requires them to furnish all the water they have to the citizens of Cœur d'Alene. They allege in the complaint that we have water on hand over and above what we are using. We do not have to confine ourselves to Cœur d'Alene.

(REFEREE:) It might be a serious question if the residents of Cœur d'Alene wanted water and you didn't furnish that water under the franchise, whether you could continue to hold the franchise and furnish water outside.

(KNIGHT:) We do not have an exclusive franchise.

Objection overruled. Exception.

(Question read.)

A. I could not tell without making account.

(REED:) Can you say approximately how many? Do you know whether one or a dozen?

A. I wanted to see if I could not give you somewhere near an accurate statement. I should say 30; I think that would cover it, and they are all located on a higher elevation and consequently do not get water—in other words the people in the town—city limits have the first chance at it and when there is no water outside of town, there is offtimes water in the city limits; but there *there* is no time when there is water outside of the city limits
101 and none in, on account of the greater elevation—greater rise.

Q. You don't think it would be possible to get a little water along with the rest.

A. No, sir, those are the consumers we had to rebate, the consumers outside of town.

Q. Who are some of those consumers?

(KNIGHT:) We object to that.

A. I cannot recollect.

(REFEREE:) I think so.

(REED:) Do you furnish any water to acre tracts outside of the city limits for irrigation purposes?

Objected to. Overruled. Exception.

A. Never been able to so far, that is for irrigation.

Q. You have pipes laid down to some acre tracts with that intention have you not?

A. Yes, but we fell down in quantity.

Q. Never furnished any water for irrigation purposes?

A. I suppose a few of them are able to get a small amount of water but not what we should have furnished them.

Q. Are those approximately 30 consumers you have outside of the city limits, do all of them have acre tracts?

A. Oh no. Some have only lots. Very few of them use any water for irrigation or want to use water for irrigation.

Q. How many feet or miles of main have you outside of the city limits?

Objected to as immaterial and incompetent. Overruled. Exception.

Q. Connected with this particular plant?

Objected to; don't make any difference.

A. I don't know.

Q. Do you know whether it is 500 feet or 3 or 4 miles?

Objected to as immaterial.

(REFEREE:) It seems to me that that would be immaterial.

(REED:) I think it would have a bearing on whether or not they furnish sufficient water or could furnish sufficient water for the

inhabitants of the city; if they had 2 or 3 miles of mains outside of the city it would certainly decrease the pressure.

(REFEREE:) He may answer it. Exception.

A. I cannot give an approximation; but I should say not more than 3 miles at the most and it is only of small diameter and inexpensive pipe, for the reason that the ground slopes to the south; in other words as you go north the elevation keeps increasing; nearly all the consumers outside the city limits are much higher in altitude than the consumers within the city limits and for that reason don't get water when the consumers in the city limits do.

REED:

Q. Do you know how much higher the altitude is out in Myerdale Addition is than Sims' Addition?

A. I cannot say but it certainly must be considerable higher.

Q. Say approximately if you know. Do you know whether it is any higher?

A. I know it is higher.

Q. That you are certain of?

A. Absolutely possibly would be not less than 25, 30 or
102 maybe 50 feet.

Q. Higher?

A. Yes, sir.

Q. Myerdale is outside of the city limits?

A. Yes, sir.

Q. Sims' Addition is in the city limits?

A. Yes, sir.

Q. You do not say positively that it is at least 25 feet higher do you? Don't know.

A. Yes, I am positive it is 25 feet higher.

Q. Suppose it should develop that it is not more than 10 feet higher?

A. I will take chances on it.

Q. In other words you are guessing at it?

A. No, sir, because I ran a trench line down part way on the main and I know the rise in the distance.

Q. You say that you judged that you never would get anything out of Hatch for water other than the $1.50 which he tendered on March 22nd, that you judged that from past experience and what you knew of him; do you mean that?

A. Did I say that?

Q. Yes, you said it; did you mean it?

A. I don't think I put it exactly in that way. I think I said from my experience of Mr. Hatch I didn't think it would be profitable to sell him water.

Q. What did you mean by that?

A. I mean that it cost us more to try to collect what he owes us than the amount of the bill.

Q. On bills that were not disputed?

A. I don't think he disputed it.

Q. Disputed your right to collect it, is not that true? Didn't

Hatch always pay you all the bills that he considered legitimate?
A. No, sir, I don't think he did.
Q. Have you unpaid bills against Hatch that he considered legitimate?

(KNIGHT:) Objected to. I never saw a debtor in my life but what he denied the bill was just.
(REFEREE:) He may answer it. Exception.

(REED:) How many years did Mr. Hatch obtain water from the Consumers Company and paid for it, do you know?
A. He did pay for some water, but I could not say the exact length of time. I don't think he took and paid for water more than a year or so.
Q. Don't think he paid for water more than a year or so?
A. More than one year or something like that.
Q. Do you know whether Mr. Hatch was engaged in the restaurant business?
A. I do.
Q. How long was he engaged?
A. I don't know how long it was he was engaged in the business. I am quite satisfied that while he was in that business he paid his account.
Q. You don't know how long that was?
A. I do not know.
Q. As a matter of fact was it not two or three years?
103 A. It may have been for all I know, but he didn't buy water from us during that time.
Q. For the reason that you didn't have the plant at that time?
A. Certainly.
Q. You never had any trouble in collecting from him when you were furnishing water for the restaurant?
A. Yes, sir.
Q. You did have trouble?
A. You bet we did.
Q. In what way?
A. Well as I say, it cost us more to collect what we did collect from him almost than the amount of the bill, the collector's time.
Q. Do you say that Hatch persistently let his bills run?
A. Yes, sir.
Q. That you say positively?
A. Yes. I don't know whether he was unable to pay them or whether he didn't want to pay them.
Q. As a matter of fact don't you know that Mr. Hatch pays his bills promptly except one or two months when he was sick and afterwards he paid all up?
A. I don't know what length of time he didn't pay; it was several months that he got back and we had to urge him to collect from him.
Q. Never had to sue him did you?
A. No, sir. It was only on March 20th he came into the office and inquired as to the amount of his bill.

Q. When?

A. March 20 this present year that he came into the office and inquired as to amount of his bill.

Q. He didn't ask how much he owed you did he?

A. Yes, sir.

Q. Didn't he ask how much you claimed he owed you?

A. Well, he didn't ask me but the record shows he asked the amount of his bill; now I don't know just how he put it.

Q. Don't know whether he asked how much you claimed to have against him?

A. No, sir, I don't know.

Q. Had you sent him statements right along?

A. Our practice is to mail statements on the first of every month—I mean deliver; we deliver them now; we deliver them as soon after the first of the month as we can, every month.

Q. Had your collectors called on him for those bills? the amount you claimed he owed you?

A. I am satisfied that he has been advised at least once every month or so.

Q. Did your collectors call on him as was the custom?

A. They were instructed to do so and reported that they did.

Q. Do you know how much plaster Mr. Hatch put on his house up there?

A. No, sir, I have no idea.

Q. What do you charge plasterers for water?

A. I cannot remember, but we have a rate for it.

Q. Do you know how much it is?

104 A. I can ascertain.

Q. 15c. per 100 yards is it?

A. We usually sell water for building purposes by meter; we charge a regular meter rate.

Q. Will you find out and let us know?

A. Do you want to know right now?

(KNIGHT:) We can send Mr. Hahn to get it if you want to know.

(REED:) We will wait and he can bring it in Monday night.

Q. At the time Hatch demanded water on the 22nd of March you did not raise any question as to the size of his house or anything of that kind did you, how many f-ucets he had, you didn't inquire did you?

A. I did not. I don't know whether the boys did or not, but I don't think the question was raised.

Q. In refusing the $1.50 he tendered, it was not because of the insufficiency of the amount with reference to the size of his house or the number of taps he had?

A. We were ignorant of what he was going to have; we didn't know whether he was going to have a store or residence, bath, toilet, horse or cow.

Q. Did you ask him?

A. We didn't ask him that I know of; he may have asked.

Q. Didn't make any difference to you did it?

A. Certainly it does.

Q. Why didn't you ask him?
A. I don't think we got that far along.
Q. You simply refused his money, is not that it?
A. We gave him an opportunity to obtain water according to the rules and regulations.
Q. What were the rules and regulations you asked him to conform to?
A. One was that before securing water he would have to sign an application in writing for water service.
Q. What did that application provide?

(KNIGHT:) We object; he has been over this 2 or 3 times. Also that it is in writing. Show it to the witness.
(REFEREE:) The best evidence would be the writing itself.
(Reed gets paper and presents to witness.)
(KNIGHT:) It is set out in writing; they cannot deny it under the statutory rule.

(REED:) Did I understand you to say on direct examination that it would amount to confiscation of your property if you were compelled to put in taps free of charge at your own expense?
A. One tap you mean?
Q. No, all taps that are demanded?
A. It certainly would.
Q. It would?
A. You bet it would.
Q. That is, you would not make any profit on the investment the first year?
A. We would go broke.
Q. The first year?
A. I guess just as soon as they made applications fast enough if we attempted to fulfill the demand.
105 Q. How many applications would they have to make in one year to make the company go broke?

(KNIGHT:) Objected to; that is unreasonable. It would depend altogether on where the applications were made.
(REFEREE:) Answer the question.
Exception.
A. That is a difficult matter for me to determine.
(REED:) Do you know how many taps you make a year on average?
A. You mean each year right straight through?
Q. Yes, take the four and a half years you have been in there, how many taps have you averaged a year?
A. I don't know exactly.
Q. Approximately; I am not asking for exact figures.
A. I presume probably 200.
Q. 200 a year?
A. Some years we make more; it all depends on the building; in direct proportion to the number of houses put up.
Q. How many years have you been charging for taps?

A. Since May 15th, 1905.
Q. They were not charging for taps when you went in there?
A. The old company charged for taps.
Q. I am asking for yours, my question?
A. For a while we had to put in taps gratis in order to get consumers from the old company who had all the consumers connected up with taps.
Q. You bought out the old company did you not?
A. Not until after we had a little fight with them.
Q. You started the fght of your own——
A. There were two competing plants here for a while.
Q. When did you buy them out?

(KNIGHT:) Objected to as incompetent, irrelevant and immaterial, don't make any difference.
Overruled. Exception.

A. Sometime in November 1903 and we began operating our own system and their system on December 1st, 1903.

(REED:)

Q. You began charging for taps what month?
A. May 15th, 1905.
Q. There was a year and a half you owned the only plant there was in town that you did not charge for taps?
A. Yes; that was a precedent that was established and was continued through misunderstanding.
Q. What precedent?
A. Making free taps.
Q. I think you said the old company charged for taps?
A. They did. In order to get business and compete with them we had to give free connections.
Q. You had to continue it a year and a half after you purchased their plant?
A. No.
Q. You did, didn't you?
A. We did.
Q. You know Mr. Conrad do you?
A. I think I do know one Mr. Conrad.
Q. Lives on 7th St.?
A. Yes, sir.
106 Q. Do you remember of putting in a tap for him?
A. I remember he was on a tap of the old company and was unable to get sufficient quantity of water and there was a new main in front of his premises and in order to deliver him water we had to change his tap from the old main onto the new main.
Q. Do you remember his coming in and offering to pay for that tap?
A. That is beyond my memory.
Q. Don't remember what you told him?
A. That is beyond my memory.
Q. Do you remember of having told Conrad when he called to

pay for the tap that you could not charge for a tap under the franchise you were not allowed to do that?

(KNIGHT:) Objected to as incompetent, irrelevant and immaterial, not proper cross-examination, don't make any difference.

(REFEREE:) I think it would be open to the objection that it is not proper cross-examination.

Exception.

(REED:) As I understand you took the proposition which you submitted to Mr. Hatch about April 1st with reference to furnishing him water he made a conditional reply?

A. I think he did but I did not ascertain what that was.

Q. You don't know what that was?

A. He didn't reply to me.

Q. Do you remember how many consumers you had at the time you bought out the old company?

A. No, sir.

Q. Could not say even approximately?

A. No, sir.

Q. Do you know how many they had at the time you went in?

A. No, sir.

Q. You still think do you that if you were required to put in taps at your own expense it would confiscate your property and bankrupt the company?

A. One tap would not, but if you were to——

Q. Would all the taps as they come in, as they have come in in the past?

A. It certainly would.

Q. You have put in, in the four and a half years you have been in, probably 800 taps; do you say that would bankrupt the company?

A. I should say that we have put in more than that.

Q. *Q.* 900, you said 200 a year?

A. I would say about 1050, 1000 or 1050.

Q. How much would that amount to?

A. Of course that, at our average rate, would probably amount to $8,000.00 or $9,000.00 or $10,000.00.

Q. You think that would bankrupt the company?

A. I don't think that.

Q. Is not that what you said?

A. That is the tap alone; when you take into consideration the main?

Q. You don't pretend to charge for the mains?

A. In order to make the taps we have to extend the main to the tap.

Q. But you don't charge for the main do you?

A. No, sir, we don't but that would help bankrupt us just the same. Those idle mains.

107 Q. Does every dollar you expend on the plant help to bankrupt you?

A. No, sir.

(Question read:) I think you are considering it in one sense to put in a tap?

(KIGHT:) Objected to; there is another question of law.

(REED:) That is a question of fact.

(Question read.) I think you are considering it in one sense and Mr. Reed in another.

(REFEREE:) He can omit the legal aspect of it and answer the others.

A. Of course some taps would be made probably where the mains now exist but a majority of them would be out in the outlying districts where real estate men have large tracts of land they want to put on the market and they would want the mains run out where they could connect and put on taps.

(KNIGHT:) Same thing in every addition.

(REED:) Would you have to extend the main to put in a tap for Hatch?

A. No, sir.

Q. You say you do not pretend to put in all the extensions that the real estate men ask you to?

A. We cannot.

Q. In fact you don't put in very many of them do you?

A. No, sir.

Q. Do you think that in half of the cases where you are asked to put in taps you have to extend the main in order to make the tap?

A. Yes, sir, more than half.

Q. 75 per cent?

A. I could not compute an average exactly.

Q. You have mains in all of the principal streets in the city have you not?

A. Principal streets in the city limits we have them.

Q. What is your custom in extending mains in regard to how many feet do you extend it for a customer when he asks for a tap?

A. All depends on the size of the main that is necessary.

Q. Say 4 inch main.

A. We have been extending in the city limits about 100 feet for a customer; but our regulation is 50 feet.

Q. Do you figure in the cost of the main as a portion of the expense of furnishing water?

A. We figure the cost of the main as part of our investment.

Q. You don't figure it as part of the cost or expense of furnishing water?

A. No, sir, always as investment.

Q. From each consumer you get not less than $22.00 per year don't you including the lawn service?

A. Very few of them that will average that. I won't say very few, I think——

Q. That is figuring at the minimum rate. 1½ times 12 is 18 and $4.00 lawn service?

(KNIGHT:) There is no testimony of lawn service here.

(REED:) What is the average cost oer customer for furnishing water in this city?

A. The average cost?

Q. Yes.

108 A. Never determined it.

Q. Never figured it up?

A. No, sir.

Q. How can you tell how much you make per consumer?

A. I have determined that approximately.

Q. Can you figure that out without figuring the cost of delivering water?

A. You can.

Q. How do you do it?

A. Divide the profits by the number of consumers.

Q. Do you know how much you take in per year?

A. We have for a month.

Redirect exam.

By KNIGHT:

Q. Mr. Reed has asked you several questions in regard to several additions which appear upon Ex. C introduced by the plaintiff and referred to them as within the city limits. Do you mean to say that they are within the city limits or simply within——

A. Within the so called city limits.

Q. You mean they are within the so called or claimed city limits?

A. Yes, sir.

Q. Referring to the Sims' addition among others as within the city limits. Is that in the same condition as the others, you simply mean as appearing upon the exhibits?

A. So called city limits.

Q. Your testimony in regard to the number of customers or consumers that are outside and inside of the city limits was given with reference to the city limits as they appear upon Ex. C?

A. Yes, sir.

Q. And if, as a matter of fact, the city limits of Cœur d'Alene are south of what is known as Hunt's Addition and Reed's Addition, the number of consumers that you have outside of the city limits would be greatly increased?

A. Increased.

Q. The number of taps you have inside of the city limits would be greatly decreased would they not?

A. Certainly.

Q. You stated in your testimony that making these taps would confiscate your property, and the making of one tap and the expense of the thing, if you received $1.50, would confiscate $7.00 of your property would it not?

A. Yes, sir.

(REED:) Objected to as leading.

(REFEREE:) Let it stand. Exception.

(KNIGHT:) There is a difference between confiscating part of your property and confiscating all of it.

A. I understood Mr. Reed to infer all of it; I understood him to refer to all of the property; of course each tap would confiscate just that much.

Q. Just that proportion?

A. Yes, sir.

Q. In order to succeed in confiscating all of it they would have to compel you to either extend the mains or put in taps sufficient
109 to consume the balance?

A. Yes, sir.

Q. That, you say, would result, if you were bound to extend your mains to the various highways and byways, circular and semicircular avenues that make up what is pretended to be within the city of Cœur d'Alene?

(REED:) Objected to as incompetent, irrelevant and immaterial, has no bearing upon the issues involved in the case nor is the question of compelling the defendant to extend its mains through the various byways and highways and circular avenues involved here.

(REFEREE:) Let us confine the issue as much as possible.

(Question read.)

A. I don't quite get the meaning.

(KNIGHT:) You say confiscation of all your property would result.

(BOUGHTON:) I ask that counsel be sworn.

(REFEREE:) Let witness answer the question.

(KNIGHT:) Do you understand it?

A. I have not got quite the meaning; I am afraid I will answer it wrong.

(KNIGHT:) The question is, you say that confiscation of all the property would result from the requirement that you at your own expense extend your mains and make taps to the various pretended lots appearing in all of these outlying additions to the city of Cœur d'Alene?

A. Yes, sir.

(REED:) Objected to as incompetent and immaterial and leading.

(REFEREE:) I think it is oen to objectionp, but let him answer. Exception.

(KNIGHT:) Do you understand that?

A. I think I do.

Q. Answer it.

A. Yes, it would result in that.

Q. You speak of a number of taps that were put in that were not used; I will ask you whether or not it is common in the city here for a large number of taps to be put in for those residences and for those residences to be abandoned and other residences to be occupied and require taps at the other residences?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A. Yes, a great ma-y houses located in the outskirts of town were put up during the prosperous times in Cœur d'Alene and were afterward vacated for the reason most of the people left town and therefore the taps were practically not in use and we received no revenue or income from them.

Recross-exam.

By Mr. REED:

Q. Have you any way of knowing how many residences in town have been abandoned and the people moved away where you had taps?

A. I guess not as many at the present time as there were last winter. Last winter there was 100 or 200 at one time.

Q. Do you mean 100 or 200?

A. That is as near as I can draw the limit.

110 Q. The houses are practically all occupied now?

A. They are becoming occupied.

(Witness excused.)

(KNIGHT:) I would like to recall Mr. Hatch a moment.

ALBERT L. HATCH, recalled for further cross-examination, testified as follows:

(KNIGHT:) Did I understand you to say there was no arrangement in your house for the purpose of making bath connections and toilet connections at all?

A. There are none at all.

Q. None at all?

A. No, sir.

(Witness excused.)

(Taking of evidence adjourned until 7 o'clock Monday night next.)

(Taking of evidence resumed at 7 o'clock P. M. pursuant to adjournment.)

GEORGE HARDING, recalled to witness stand, testified as follows:

(KNIGHT:) You had some corrections you wished to make?

A. I did. In the hurry last night, or rather Saturday night in computing the receipts for March, '09 we accidentally got part of March '08 in with March '09. I want to correct March '09 receipts to read $2714.50 in lieu of $2329.85. My approximation was nearer right than my figures. The number of taps—I would also like to state that when I gave the amount of receipts from each tap I don't know whether I made it understood that when I gave $1.60 to $1.75 per tap I meant residence charge only, not including business taps. Residence taps only cost that so that was the basis on which I computed it.

(BOUGHTON:) That was not a question asked.

A. My errors were pointed out to me by those who heard the evidence.

(KNIGHT:) Proceed with the cross-examination.

Cross-exam.

By REED:

Q. What was your income for 1908,—income to the Consumers Co. from flushing sewers?

(KNIGHT:) Objected to as immaterial and incompetent.
Overruled. Exception.

111 A. I cannot tell offhand.

(REED:) Can you give an approximate estimate?

A. Not within reasonable limits. What year did you say?

Q. 1908.

A. That is from January 1st to January 1st?

Q. Yes.

A. Roughly I should say $200.00 or $250.00.

(KNIGHT:) Objected to as immaterial.
(Discussion which reporter was asked to leave out of the record.)

(REED:) When you testified the other night that your profet per tap was $4.50 per consumer a year, the $4.50 per consumer a year was not all of your profit in the water company for a year was it?

A. As I remember it was, but I did not make an exact statement, it was $4.50; I stated only approximately; I think I arrived at that amount just roughly.

Q. You swore to it in your answer did you not?

(Knight reads answer.)

(REED:) How did you arrive at that amount?

A. By approximation.

Q. It is not a fact that it does not exceed $4.50?

A. It is very close to it.

Q. May it be $5.00 per consumer?

(KNIGHT:) We went over this ground Saturday evening. Witness said probably between $4.60 and $4.75.

(REFEREE:) Confine yourself to ground that has not been covered if possible.

(REED:) In arriving at $4.50 did you include in that lawn service?

A. I believe I did.

Q. Taps where there was no lawn service at all would there be any profit—there would be no profit to exceed 50c.?

A. That was just a rough average.

Q. That average I say; the taps where there was no lawn service the profit was only 50c. a year?

(KNIGHT:) Objected to; it is not a just conclusion.
(REFEREE:) Let the witness answer.

A. Just as testified to the other night, there are many consumers in Cœur d'Alene that were furnished at an actual loss.

REED:

Q. Then you admit there would be only fifty cents profit for taps without lawn service?
A. In some consumers there is not that much profit.
Q. Do you or don't you furnish water for the parks?
A. We do.
Q. What is your income from that source?
A. I suppose it would average about—you mean throughout the year?
Q. Yes.
A. It is dependent upon the weather; usually lasts about 5 months and runs as high as $100.00 a month.
Q. Was that $500.00 taken into consideration including the profit per tap?
A. I think it was.
Q. Will you swear it was?
A. I am not certain because I say it was just as rough approximation. I could produce the figures I presume.
112 Q. Do you furnish water for the cemetery?
A. A small amount.
Q. What does that amount to?
A. It is hardly worth considering; not as much as a resident consumer.
Q. Not per month as much as residences?
A. Not as much in a year as we derive from one resident consumer.
Q. Don't receive $18.00 a year from the cemetery?
A. It is a difficult matter for me to remember these details but I presume I could get the information for you if you consider it necessary.
Q. Let me ask you in regard to flushing the sewers. Do you recollect that you had at one time a bill for $500.00 against the city for flushing the sewers last year, 1908?
A. I don't recollect any such bill not in one month; it might have been an accumulation of 3 or 4 months; might have had in a lot of construction work such as installing fire heads; probably may have been during the time the consumers company was handling——
Q. Then it exceeded $500.00?
A. In 3 or 4 months?
Q. Yes, during the season?
A. I cannot remember that, but if you need the data I presume I could procure it.
Q. I would like to have you procure it.
A. Right now?
Q. Yes, if you have it in court. The whole bill for flushing sewers.
(Witness looks at book.)
Q. Have you found that?
A. Yes, sir.
Q. How much?
A. $122.10.
Q. The total amount for flushing sewers?

A. During that year.
Q. How much was the total amount for City Hall purposes?
A. Water for the city?
Q. Yes.
A. That is the only charge we have against the city for water.
Q. For flushing sewers; didn't you have other charges?
A. We don't charge for sprinkling the streets & fire protection. We may have made a charge for the cemetery more than that.
Q. What is the total amount you have charged against the city for 1908 for all purposes whether for flushing the sewers or otherwise the total amount received.
A. We have a charge of $122.10 for flushing sewers. Charge of $406.95 water furnished to city park for irrigation.
(REED:) That does not include the amount received from the cemetery.
A. There were some small amounts received from the cemetery; I have been unable to uncover them, but they were trivial.
Q. What do you mean by irrigation?

(KNIGHT:) I certainly object to that.

(REED:) Do you mean sprinkling the park?
A. You go down there and see them waste water and you would think it was irrigating.
Q. Can you tell me from the books you have here what the total amount of your income was for 1908?
113 A. I cannot; we do not compute it that way.
Q. Don't compute it?
A. Our fiscal year does not end on December 31st.
Q. When does it end?
A. May 31st.
Q. Can you give it from May 31st, 1907 to May 31st, 1908?
A. I have not it at hand.
Q. You have not the information here?
A. No, sir, it was not requested; I did not know you cared for it or wanted to go back that far.
Q. Did you compute the amount from March 1st I think it was 1908 to March 1st, 1909? I think that was what you were asked to do.
A. No, sir, it would take about 2 weeks' time to take off that statement. It was impossible to do so.
Q. Do you know the amount that you received for irrigating purposes outside of the city limits, irrigating and domestic?
(KNIGHT:) City limits as per Ex. C. or as they really are?
(REED:) As they appear to be and as they are, as shown by Ex. C.
A. We have received only a small amount for irrigation because most of the water we have sold outside of the city limits it is only in limited quantities, has been used for domestic purposes.
Q. What amount was that?

(KNIGHT:) This has been covered fully.
(REED:) We don't ask how much they received.

(REFEREE:) You asked the number of consumers.

(KNIGHT:) About 30, average, the average income from those 30 users.

(REFEREE:) If you can, answer it.

A. I can only give it approximately. Nothing more or less than cost. I cannot give it in any reasonable limits because it is only a small amount.

Q. $500.00?

A. I should say not.

Q. $300.00?

A. You mean for irrigation outside the city limits?

Q. Irrigation and domestic purposes?

A. As I said before we have 30, probably 40 consumers outside the city limits and very few of them were able to get enough water to do any sprinkling, so that is about as near as I can answer it.

Q. Did they get enough for domestic use and did you charge them the domestic rate?

A. No, sir, we rebated them throughout the summer for a period of 2 or 3 months because we could not deliver the goods.

Q. Can you tell me what the expenses were for the year ending May 31st, 1908?

A. It was not computed that way; our fiscal year ends May 31st.

Q. Can you tell me how much the expenses were for the fiscal year ending May 31st, 1908?

A. I didn't bring that book.

Q. Can you tell that offhand?

A. I cannot.

Q. Can you give it approximately?

A. I would not attempt to say.

Q. How many employees do you have?

A. You mean regular employees?

Q. Yes, regular employees.

114 A. About 8 or 10.

Q. That work exclusively for the Consumers Co., the water company?

A. No, sir, not 8 or 10 that work exclusively.

Q. They work for the Light Co. and also for the water company?

A. Some of them draw a salary from each company. Mr. Hahn draws a salary from either company.

Q. Of course in figuring up your expenses for the year you don't figure any part of the light company's to the water company?

A. I should say not. They have definite salaries and know exactly what to expect, and then there are other men who work at a certain rate per hour whose time we keep and pay them accordingly.

Q. You said there was probably 100 or 200 vacant houses in town. How do you compute that?

(KNIGHT:) Objected to. They are going over the same ground. We consumed 2 or 3 hours Saturday with the same stuff.

A. We arrive at it in this way. In our card file we have a sepa-

rate place for vacant houses and the cards for those houses are kept in that vacant file and we can tell by looking at the vacant file about the number of vacancies in town at any time.

Q. You have looked at the vacant file?

A. I have not personally looked at it but the boys informed me the vacant houses amounted to about that many.

Q. You don't know anything about it any more than that they told you?

A. That is all. I ascertained one question you asked me the other day, I can give that if you desire. That is the status of the tap account as to charges and receipts.

Q. All right, let us have it.

A. Our total receipts for taps for the last 11 months dating from the first of this current fiscal year are, total receipts have amounted thus far to $1047.75. Our total costs for taps during the same——

(REED:) That is all we have from Mr. Harding at the present time, but want to recall him.

Redirect exam.

By KNIGHT:

Q. What amount have you paid out for taps during the same period of time?

A. During the same period of time we paid out $1037.66.

Q. What is the total profit?

A. $10.09.

Q. Do you have an obligation in regard to those taps imposed upon you?

A. We have to keep those taps in order, lower them when it becomes necessary when the streets are graded and take care of them in cases of all breaks, etc. during the entire use.

Q. Would the cost of lowering them to grade exceed $10.09?

A. It would probably exceed that in one case.

115 Recross-exam.

By REED:

Q. Do I understand that the total amount received for the 11 months for all taps was $1047.75?

A. Yes, sir.

Q. That is all the money you received?

A. Yes, sir.

Q. From some 1400 taps?

A. Yes, this is just 11 months of this present fiscal year.

Q. I understood you to be testifying to the amount received from the Consumers.

A. This is the cost of installment of the taps, service connections.

Q. You say you lower all of the taps at your own expense?

A. We install taps on all streets where they are necessary, that is where we do install them, for the original cost and thereafter take care of them, that is, outside of the curb; but where the tap extends

inside the property lines we never lower the tap inside the property without doing so at the expense of the property owner.

Q. When 2nd St. was graded didn't you charge all the property owners on that street for lowering the pipe?

A. We did for pipe inside the curb but not outside of the curb. I remember Varnum was one of the bunch.

Q. That $1037. and some odd cebts I think it was that you paid out of money received for putting in taps, you say that was charged to the expense account. What did you do with that money?

A. That helped offset the cost of putting in the taps.

Q. You have that account credit didn't you for the money received?

A. We did.

Q. How did you use it then?

A. We received $1047.75 of which we spent $1037.66 for making the taps for which we received $1047.75 and we had left $10.09.

Q. Did you use any portion of that in extending the mains?

A. We did not.

Q. Extending the mains was no part of it?

A. Absolutely none.

(Witness excused.)

116 J. T. SULLIVAN, called and sworn on behalf of defendant and examined in chief by Mr. Knight, testified as follows:

Q. State your name, residence and occupation.

A. J. T. Sullivan, Cœur d'Alene, contractor.

Q. I believe you are one of the commissioners or a member of the commission which fixed the water rates for the city of Cœur d'Alene in the year 1907?

A. Yes, sir.

Q. August 14th, 1907 the report was submitted in which you fixed the water rates for residence and business houses according to the different classes, sprinkling rates, and you also fixed the price for making water service connections, fixing the rate for one half inch pipe $7.00, three quarter inch pipe $8.50 and one inch pipe $10.00 and in arriving at your conclusions you took evidence from witnesses here offered by the city and water company did you?

A. Yes, sir.

Q. In fixing these rates, I want to inquire whether in arriving at the different classes of rates to be charged for different classes of service, you took into consideration the rates fixed for all collectively, so that in fixing one rate you took into consideration the entire revenue derived from the entire rates fixed including rates for service connections?

A. I cannot say that we did exactly.

Q. How did you arrive at those different rates?

A. Compared them with communications we had from other places. Our city clerk at that time had received correspondence from different cities and compared the conditions—different things.

Q. In arriving at those rates did you arrive at the rates you did—

fix the rates you did fix for the different classes of service, upon consideration of the revenue that the company should derive out of all the different rates you fixed?

A. Yes, sir.

Cross-examination.

By BOUGHTON:

Q. In arriving at the rates by this commission did you take into consideration particularly the fixing of the charge for making service connections?

A. I don't know that that was done in particular.

Q. Was there any discussion concerning that charge?

A. Yes, sir.

Q. What was the nature of that discussion?

A. I don't remember very much about it; it is a thing I have not thought anything of since and a good deal of it has slipped my memory.

Q. As a matter of fact that report was prepared—that rate list was prepared by the attorneys for the Consumers Co. was it not?

A. No, sir.

Q. Mr. Elder, one of the defendant's attorneys was a member of that commission was he not?

A. Yes, sir.

117 Q. Did you say that that portion of the rate dealing particularly with the service connections was not particularly considered?

A. I don't know that it was considered particularly.

Q. As a matter of fact didn't you state that you considered the commission had no authority to fix that rate and it didn't make much difference whether you put it in or not? Didn't you state that as your opinion?

A. Yes.

Q. You did state that?

A. Yes.

Q. The commission had no authority to make that part of the rate?

A. Yes.

Q. Didn't make much difference. You were one of the commissioners selected by the city?

A. Yes, sir.

Redirect exam.

By KNIGHT:

Q. You considered that that was something entirely within the company's power to fix itself?

A. I don't know; I didn't think according to our instructions it was our duty.

Q. Didn't think it was your duty?

A. No, sir.

Q. From whom did you receive instructions, the city authorities?

A. I cannot say just exactly who; it seems we were to fix the rates to the consumers.

(Witness excused.)

RALPH T. MORGAN, called and sworn on behalf of the defendant and examined in chief by Mr. Knight, testified as follows:

Q. *D*tate your name, residence and occupation.

A. R. T. Morgan, Cœur d'Alene, Idaho, lawyer.

Q. Were you a member of the commission that fixed the water rates charged by the Consumers Co. to the residents of the city of Cœur d'Alene?

A. Yes, sir.

Q. In arriving at the rates fixed for the different classes of service including the rate for making service connections, I will ask you whether or not you considered all of these several rates together and the revenue which should be derived jointly from all of the various rates?

A. That is my recollection of the result of the work of the commission.

118 Q. Was this report of your rates fixed after hearing evidence on the part of the company and on the part of the city.

A. Yes, sir.

Q. Investigating the reports of different cities throughout the state of Idaho upon this subject?

A. Yes, sir.

Cross-examination.

By BOUGHTON:

Q. You were one of the commissioners selected by the Consumers Co. were you not?

A. I was.

Q. Was there any particular discussion relative to this portion of the rate intended to establish a charge for making service connections?

A. It was discussed with the other rates.

Q. You were personally opposed to that part of the rate were you not? In other words didn't you advise the commissioners, the commission of which you were a member, that the commission had no authority—no right to fix that particular rate for making service connections?

A. I think there was some discussion of the question as to whether the commissioners had the legal right to fix that rate.

Q. You expressed it as your opinion that it did not have did you not?

Objected to. Overruled. Exception.

(KNIGHT:) Objected to upon the ground that it is immaterial, incompetent and irrelevant what his legal opinion was upon that question.

Overruled. Exception.

(KNIGHT:) It is a question of law to be passed upon by the court.

A. My recollection is not very distinct as to what opinion I expressed; I do remember of my saying something to the other members of the commission about that point and I might have said it was my opinion that the commission had no legal authority to fix that rate; but the matter came before the commission as I remember and a discussion on one point of it was to the effect that we were there to fix all the rates and that we should fix this rate.

(BOUGHTON:) Is your recollection concerning the matter as it was 10 days ago, on that subject?

A. I don't remember talking to you.

Q. At the time you certified to a copy of ordinance No. 99 and one other?

A. On this particular subject?

Q. Yes this particular subject; didn't you state to me at that time that you knew you had no authority to fix the rate and so advised the other members of the commission?

A. I might have stated that it was my opinion; I didn't say that I knew.

Q. You stated that you told them that they had no authority in your opinion to fix these rates didn't you?

A. I think I stated something to that effect.

(Witness excused.)

119 (KNIGHT:) I offer in evidence ordinance No. 95, ordinance No. 96 and ordinance No. 215 and ask that they be marked for identification.

(Ordinances marked respectively Ex. 1, 2 and 3.)

(Def't's Exs. 1, 2, and 3.)

We now offer these three ordinances in evidence marked Def't's Exs. 1, 2, and 3.

(Hands exhibits to Boughton.)

(KNIGHT:) The reason we do not offer ordinance No. 99 is because it is already offered in evidence by the plaintiff.

(REED:) We object to the introduction of ordinances numbered 95, 96 for the reason that they are immaterial, irrelevant and incompetent to *that* the issues in this case and have no bearing on the case whatever.

(KNIGHT:) They are the ordinances in regard to these several additions.

Objection overruled. Exception.

It is stipulated by and between the parties to this action that no ordinances have ever been passed by the corporate authorities of the City of Cœur d'Alene concerning what appears upon Pl'ff's Ex. C as Hunt's Addition, Russell's Addition, Krotzer's Addition and Reed's Addition save and except Ordinance Nos. 95, 96 and 215 offered by the defendant, and Ordinance No. 99 offered by the plaintiff. Plaintiff reserves the right to correct this stipulation if subsequent investigation of facts shall justify—if other ordinances are found.

(REFEREE:) That is satisfactory is it?

(REED:) Yes.

(Maps marked Def't's Exs. 4, 5, 6 and 7.)

(KNIGHT:) I offer now in evidence certified copies of maps of Hunt's Addition, Russell's Addition, Krotzer's Addition and Reed's Addition to the city of Cœur d'Alene, certified by the County Recorder, all of them, respectively Pl'f's Exs. 4, 5, 6, and 7.

(REED:) We object to the introduction of the plats or Hunt's Addition, Russell's Addition for the reason they are immaterial, irrelevant and incompetent.

Objection overruled. Exception.

It is stipulated by and between the parties to this action that the certified copies of the plats of Hunt's Addition, Russell's Addition, Krotzer's Addition and Reed's Addition marked respectively De'f'ts Exs. 4, 5, 6, and 7 (Def't's Ex. 4, Def't's Ex. 5, Def't's Ex. 6 and Def't's Ex. 7) are the only plats of the several pretended additions therein mentioned which have ever been filed with the Recorder of Kootenai County.

(REED:) I object to the introduction of Def't's Ex. No. 7.

(KNIGHT:) Plaintiff reserves the right to supply other plats provided the record shows that any others have been filed. Is that satisfactory?

120 (REED:) Yes.

(Plat marked Def't's Ex. 8.)

It is stipulated by and between the parties to this action that Def't's Ex. 8 offered by the defendant, correctly represents the dimensions of a certain unsurveyed, unplatted tract of ground lying northerly of what appears upon Ex. C offered by plaintiff, as Cœur d'Alene and King's Additions and south of what appears on Pl'ff's Ex. C as Hunt's Addition and Reed's Addition to the city of Cœur d'Alene; that said unsurveyed and unplatted tract of ground extends westerly from 8th St. to the easterly side of what is known as Forest Heights Addition appearing upon said Ex. C; that the dimensions of said unsurveyed and unplatted tract of ground are 67 feet on the easterly end, 2.8 feet on the westerly end and 2663.5 feet in length; that said irregular tract of ground has never been included in any addition or pretended addition to said city of Cœur d'Alene. That the original owners and holders of said irregular tract of ground claim title to the same at the present time and that the same has been platted and assessed by the assessor of Kootenai County as private property. That portions of said irregular tract of ground are enclosed within fences while other portions are used as roadways, that the enclosures mentioned are easterly from 5th St. and the *the* roadway westerly from 5th St., but it never has been used as *as* a street or alley and that the Rocky Mountain Bell Telephone Co., the company owning franchises over all the streets and alleys of the city of Cœur d'Alene, has been compelled by the owners of said irregular tract of ground to remove its telephone poles therefrom.

It is further stipulated that the northerly and southerly streets running from the main part of the city of Cœur d'Alene and extending to the northerly side of Cœur d'Alene and King's Addition, are

unobstructed across said irregular plat of ground and continue to the several northerly and southerly streets of Hunt's, Russell's, Krotzer's and Reed's Additions.

It is further stipulated that said irregular tract of ground had not, for several years prior to 1908, been assessed to the claimants thereof or to any other person.

It is further stipulated that the unplatted parallelogram appearing upon the south side of Ex. C of plaintiff, and lying between Hunt's Addition and Reed's Addition and known as the McEwin tract, has never been platted and is not included in any addition or pretended addition to the city of Cœur d'Alene.

It is further stipulated by and between the parties to this action that ordinances Nos. 95, 96 and 215, copies of which have been offered by the defendant, and ordinance No. 99, a copy of which has been offered by plaintiff, have never been filed or recorded in the office of the County Recorder of Kootenai County, Idaho, and that no other ordinances referring to said Hunt's, Russell's, Krotzer's and Reed's Additions have ever been passed by the corporate authorities of the city of Cœur d'Alene or filed by the recorder of Kootenai County, Idaho.

121 (KNIGHT:) I would like to leave it until tomorrow that should anything be forgotten it could be supplied; but I think that is all.

I now offer Def't's Ex. 8 in evidence.

(REED:) Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

(KNIGHT:) If you object on the ground that it is incompetent it may affect our stipulation. If it is outside of the issues it is irrelevant and immaterial. The stipulation is based entirely on that Exhibit and we have not proved it is correct.

(REED:) We don't object to it on the ground that it is incorrect.

(KNIGHT:) If you object on the ground of incompetency we will probably have to prove it is correct.

(REED:) I object to it as irrelevant and immaterial then and outside the issues in the case.

It is stipulated by and between the parties hereto that the plat, addition known as Taylor's Addition on Ex. C offered by plaintiff, was made, and all ordinances in regard to the same were dated subsequent to the ordinance filed herein referring to Reed's Addition and subsequent to the filing of the plat of Reed's Addition.

(REED:) The stipulation is made on the part of plaintiff under the objection that it is immaterial and irrelevant.

HARRY BODLER, called and sworn in rebuttal and examined in chief by Boughton, testified as follows:

Q. State your name, residence and occupation.

A. Henry Bodler, Cœur d'Alene City, occupation, have not a-y at the present time really, I am not in business.

Q. Were you a member of the water commission appointed to fix the rates which are now in force?

A. Yes, sir.

Q. You were a commissioner appointed by the city, or by the Consumers Company?

A. By the city.

Q. When those rates were established was there any particular consideration given to that part that purports to fix the charge for making service connections?

A. As I understood it the Consumers Company recommended a certain charge which we established as near as I understand, they showed us it could not be done for any less and they didn't want any more than actual cost.

Q. Were the rates materially changed, the rates in existence at that time?

A. From what they had been?

(KNIGHT:) Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

122 A. Why, yes, I think there was a change. The old rate for a five room house I think was $1.75 and then I think above that depended on the size of the house, I think the number of rooms; what that rate was I could not remember exactly. We established a flat rate of $1.50 for ordinary house purposes and there was a raise made for fixtures, toilets, a raise made from 25c. to 50c.

Q. Were there any other changes that had not been made prior to that time?

A. Why, I think there was a rate established for horses and cows of 25c a head.

Q. State whether or not this rate sheet practically as adopted by the commission was presented in practically the same form it was adopted?

A. Yes, but I think there was one change there which we didn't pass upon, I think that was for outside tap for house connections, they suggested to make a change (charge) for that but that was not passed upon.

Q. That was practically the only thing that was taken out and nothing put in; rates submitted by somebody?

A. I think it is, about all I can remember.

Q. Was there any evidence submitted by either party as to the cost of furnishing water?

A. Yes, the Consumers Co. furnished a statement there as to the cost and expenses etc.

Q. They submitted a statement?

A. Yes, sir.

Q. That was all the evidence?

A. That is all as near as I can remember.

Q. This rate sheet or schedule you say was presented by the Consumers Co.?

A. I rather think so; I know it was presented with other papers, I could not say.

(KNIGHT:) I move the answer be stricken out.

(REFEREE:) Answer may be stricken out, unless he knows.

Cross-exam.

By KNIGHT:

Q. You say you did change the rates for houses above 5 rooms.
A. Yes.
Q. You made a flat rate of $1.50 for ordinary houses?
A. No, sir, made a flat rate of $1.50 for every house——
Q. You were one of the commissioners appointed by the city?
A. Yes.
Q. You made an investigation of the water rates throughout the country didn't you?

Objected to.
(REFEREE:) I think the question would be proper.

A. The Consumers Co. furnished us a list of what other cities charge.
Q. Didn't the city clerk investigate the matter?
A. The city clerk was there; I don't know as he made any investigation.
Q. Was he not instructed to investigate the rates charged by other cities?
A. I really could not say.
123 Q. You went into the matter conscientiously did you not?
A. Yes, sir.
Q. With the determination to do what was right for the city and for the company?
A. Yes, sir.
Q. And after your investigations and the report of your city clerk and the Consumers Co. you fixed this schedu*al* of charges?

(BOUGHTON:) Objected to on the ground that it is not shown by this witness that the city clerk made any report or investigation.
(Question read.)
Objected to for the reason that there is no evidence that there was any investigation made on the part of the commission or that the city clerk made any investigation.
Over ruled. Exception.

A. I don't remember that the clerk furnished us a report; I know Mr. Harding, the manager of the Consumers Co. had reports there from other cities which he showed us.
Q. He had a statement of expenses incurred in furnishing water?
A. Yes, he had statements.
Q. He asked your committee to audit those?
A. Yes, investigate them, yes.
Q. You concurred in this report didn't you?
A. Yes, sir.
Q. You fixed those rates for charges for making service connections you say according to the statement made by the Consumers Co. as to what the actual cost was to put those connections in?
A. Yes, sir.
Q. What other commissioner was appointed by the city?

A. Mr. Sullivan.
Q. You and Mr. Sullivan made some inquiry in regard to water rates generally?
A. Not together, no.
Q. I ask you whether you did personally?
A. I personally made a few inquiries, yes.
Q. What is your business?
A. I am not in business at the present time.
Q. What was your business then?
A. In fact I was not in business at that time.
Q. Member of the city council?
A. No, sir, not for a time, I was off the council.
Q. You were subsequently?
A. I had been before that, yes; I moved from one ward to another and had to resign.
Q. You are now a member of the city council?
A. Yes, sir.

(Witness excused.)

124 GEORGE HARDING, recalled for further cross-examination.

By Mr. BOUGHTON:

Q. These rates as established by the commission increase or decrease the revenue of the Consumers Co., for water?
A. Decreased. You mean taking it collectively?
Q. Taken collectively, everything together.
A. Decreased the revenue.
Q. To what extent did it decrease the revenue?
A. To the extent of about $100.00 on the water receipts alone every month and also a reduction of the cost of tap which amounted to $1.50 on three quarters and $1.00 on half inch taps. That is we suffered a reduction of the water receipts as well as a reduction in the receipts from service connections.
Q. Your company was defendant in a case wherein Bothwell was plaintiff involving the same question were you not?
A. I think so.
(KNIGHT:) The Bothwell case was settled in the district court; it did not go to the Supreme Court.
A. Yes, settled in the District Court.
(BOUGHTON:) How was that settled?

(KNIGHT:) Objected to as not the best evidence, the record will probably show what is the best evidence.
(REFEREE:) The record would be the best evidence as to whether it was settled too. I think I will have the reporter strike it all out.
(Witness excused.)
(Plaintiff rests.) (Defendant rests.)
(Evidence closed.)

125 STATE OF IDAHO,
County of Kootenai, ss:

I hereby certify that the foregoing transcript of evidence in the case of Albert L. Hatch vs. Consumers Company, Ltd., is a true and correct transcript of all the short-hand notes taken by me of all the evidence introduced on the taking of said evidence before Referee, R. N. Dunn, and the same is correct to the best of my knowledge and belief.

M. D. BARSTOW,
Official Court Reporter of the 8th Judicial Dist. of Idaho.

126 STATE OF IDAHO,
County of Kootenai, ss:

I R. N. Dunn, Referee in the case of Hatch vs. Consumers Company, do hereby certify that the foregoing testimony in said case was taken before me as referee by order of the Supreme Court of the State of Idaho, and the witnesses named therein were duly sworn before giving their testimony in said case.

In witness whereof I have hereunto set my hand this 27th day of May, A. D. 1909.

R. N. DUNN, *Referee.*

127 PLAINTIFF'S EXHIBIT A.

Ordinance No. 99.

An ordinance to include within and add to the corporate limits of the village of Cœur d'Alene, Kootenai County, Idaho, territory contiguous and adjacent thereto, particularly described in said ordinance.

Be it ordained by the chairman*d* and board of trustees of the village of Cœur d'Alene, Kootenai County, Idaho:

SECTION 1. That under and by virtue of the laws of the State of Idaho, the following described territory contiguous and adjacent *ot* the corporate limits of the village of Cœur d'Alene, in the County of Kootenai, State of Idaho, is hereby annexed and added to and includ*ing* within the corporate limits of said village to-wit:

Krotzer's Addition and Varnum's Addition.

SECTION 2. The ordinance of said tracts of land are hereby declared to be within the jurisdictional limits of said village for municipal purposes of every kind as well as the residents and inhabitants of said land hereby included, and the civil and criminal jurisdiction of courts and officers of said village are hereby extended and declared to be in force over the same, which is by this ordinance annexed. All the original territory of the village of Cœur d'Alene and that annexed and made a part of the corporation is subject alike to all legal requirements, enactments and ordinances now in force in said village, as provided for by law, and the jurisdiction of the board of

trustees hereby extends over the above described annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Ordinance read first time for passage at a regular meeting of the board of trustees, held April 6th, 1904.

Ordinance read the second time for passage under suspension of the rules at a regular meeting of the board of trustees, held
128 April 6th, 1904.

Ordinance read the third time for passage under suspension of the rules, and duly enacted as an ordinance of the village of Cœur d'Alene at a regular meeting of the Board of Trustees, held April 6th, 1904.

Approved April 6th, 1904.

A. V. CHAMBERLIN,
Board of Trustees.

Attest:

JAMES H. HARTE,
Village Clerk.

Published in the Cœur d'Alene Press, a weekly newspaper, published in the village of Cœur d'Alene, in its regular issue, dated April 9th, 1904.

JAMES H. HARTE,
Village Clerk.

129 *Ordinance No. 99.*

An ordinance to include within and add to the corporate limits of the village of Cœur d'Alene, Kootenai County, Idaho, territory contiguous and adjacent thereto, particularly described in said ordinance.

Be it ordained by the chairman*d* and board of trustees of the village of Cœur d'Alene, Kootenai County, Idaho:

SECTION 1. That under and by virtue of the laws of the State of Idaho, the following described territory contiguous and adjacent *ot* the corporate limits of the village of Cœur d'Alene, in the County of Kootenai, State of Idaho, is hereby annexed and added to and includ*ing* within the corporate limits of said village to-wit:

Krotzer's Addition and Varnum's Addition.

SECTION 2. The ordinance of said tracts of land are hereby declared to be within the jurisdictional limits of said village for municipal purposes of every kind as well as the residents and inhabitants of said land hereby included, and the civil and criminal jurisdiction of courts and officers of said village are hereby extended and declared to be in force over the same, which is by this ordinance annexed. All the original territory of the village of Cœur d'Alene and that annexed and made a part of the corporation is subject alike to all

legal requirements, enactments and ordinances now in force in said village, as provided for by law, and the jurisdiction of the board of trustees hereby extends over the above described annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Ordinance read first time for passage at a regular meeting of the board of trustees, held April 6th, 1904.

Ordinance read the second time for passage under suspension of the rules at a regular meeting of the board of trustees, held
130 April 6th, 1904.

Ordinance read the third time for passage under suspension of the rules, and duly enacted as an ordinance of the village of Cœur d'Alene at a regular meeting of the Board of Trustees, held April 6th, 1904.

Approved April 6th, 1904.

A. V. CHAMBERLIN,
Board of Trustees.

Attest:
JAMES H. HARTE,
Village Clerk.

Published in the Cœur d'Alene Press, a weekly newspaper, published in the village of Cœur d'Alene, in its regular issue, dated April 9th, 1904.

JAMES H. HARTE,
Village Clerk.

131 *Ordinance No. 99.*

An ordinance to include within and add to the corporate limits of the village of Cœur d'Alene, Kootenai County, Idaho, territory contiguous and adjacent thereto, particularly described in said ordinance.

Be it ordained by the chairman*d* and board of trustees of the village of Cœur d'Alene, Kootenai County, Idaho:

SECTION 1. That under and by virtue of the laws of the State of Idaho, the following described territory contiguous and adjacent *ot* the corporate limits of the village of Cœur d'Alene, in the County of Kootenai, State of Idaho, is hereby annexed and added to and includ*ing* within the corporate limits of said village to-wit:

Krotzer's Addition and Varnum's Addition.

SECTION 2. The ordinance of said tracts of land are hereby declared to be within the jurisdictional limits of said village for municipal purposes of every kind as well as the residents and inhabitants of said land hereby included, and the civil and criminal jurisdiction of courts and officers of said village are hereby extended and declared to be in force over the same, which is by this ordinance annexed.

All the original territory of the village of Cœur d'Alene and that annexed and made a part of the corporation is subject alike to all legal requirements, enactments and ordinances now in force in said village, as provided for by law, and the jurisdiction of the board of trustees hereby extends over the above described annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Ordinance read first time for passage at a regular meeting of the board of trustees, held April 6th, 1904.

Ordinance read the second time for passage under suspension of the rules at a regular meeting of the board of——

132 Office of the City Clerk of the City of Cœur d'Alene.

KOOTENAI COUNTY,
State of Idaho, ss:

I, Fred L. Tiffany, City Clerk of the City of Cœur d'Alene, Kootenai County, State of Idaho, do hereby certify that I have compared the foregoing copy with the original ordinance No. 99 as filed and recorded in the Ordinance Book in my office, and that the same is a full, true and correct copy of such original ordinance and of the whole thereof.

[Seal City of Cœur d'Alene, Kootenai County, Idaho.]

FRED L. TIFFANY,
City Clerk.

133 PLAINTIFF'S EXHIBIT B.

Ordinance No. 162.

An ordinance declaring the municipal corporation of the village of Cœur d'Alene to be a city of the Second Class and changing the corporate name of said municipality from the Village of Cœur d'Alene to the City of Cœur d'Alene, and providing the manner in which such Ordinance shall become effective.

Be it ordained by the Chairman and Board of Trustees of the Village of Cœur d'Alene, Kootenai County, Idaho:

SECTION I. There having been presented to the Board of Trustees of the Village of Cœur d'Alene and filed with the Clerk of said Board on the 20th day of July, 1906, a petition of the qualified electors of said Village equal to three-fifths of the total votes as shown by the last preceeding general village election, petitioning said Board of Trustees to organize said Village into a City of the Second Class, and whereas said Village now contains more than one Thousand inhabitants, and whereas the inhabitants thereof desire to discontinue its organization as a Village and organize as a City of the Second Class.

SECTION II. Now, therefore, it is hereby declared that the Village of Cœur d'Alene shall be and now is a City of the Second Class.

SECTION III. That the corporated name of said Village be and the same is hereby changed from the Village of Cœur d'Alene, Kootenai County, Idaho, to the City of Cœur d'Alene, Kootenai County, Idaho.

SECTION IV. That the Clerk of said Village shall duly
134 record this resolution in the record book of said Village and shall forthwith make out a true copy of the same, duly certified by him and deliver the same to the Clerk of the Board of County Commissioners of Kootenai County and State of Idaho, Town of Rathdrum, in order that the same may be entered and recorded the same as the original order of incorporation of said municipality as a Village was recorded.

SECTION V. This Ordinance shall become and be in full force and effect from and after its passage, approval and publication in one issue of the Journal, a weekly newspaper of general circulation published in the Village of Cœur d'Alene, Kootenai County, Idaho.

Passed its first reading at a Regular Semi-monthly meeting of the Board of Trustees, held September 4, 1906.

Passed its second reading under suspension of the rules at a Regular meeting of the Board of Trustees, held September 4, 1906.

Passed its third and final reading under suspension of the rules and duly enacted an Ordinance of the Village of Cœur d'Alene, at a Regular meeting of the Board of Trustees held September 4, 1906.

Approved September 4, 1906.

ROBERT W. COLLINS,
Chairman Board of Trustees.

Attest:
JAMES H. HARTE,
Village Clerk.

135 STATE OF IDAHO,
County of Kootenai, ss:

I hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 162 of the Village of Cœur d'Alene, Kootenai County, Idaho.

[Seal City of Cœur d'Alene, Kootenai County, Idaho.]

FRED L. TIFFANY,
Clerk of the City of Cœur d'Alene.

135½ [Endorsed:] In the Supreme Court of the State of Idaho. Hatch vs. Consumers Co., Ltd. Certified copy of Ordinance No. 162 of the city of Cœur d'Alene.

PLAINTIFF'S EXHIBIT C.

(Here follows map marked p. 136.)

CHART

TOO

LARGE

FOR

FILMING

137 DEFENDANT'S EXHIBIT NO. 1.

Ordinance No. 95.

An ordinance extending the limits of the old town now village of Cœur d'Alene to include within the incorporate limits of said village certain following tracts of land contiguous and adjacent thereto.

Be it ordained by the chairman and board of trustees of the village of Cœur d'Alene, Kootenai County, Idaho,

SECTION 1. That all lands and real premises mentioned in the next succeeding section hereof be, and the same *is* hereby included within the incorporate limits of the village of Cœur d'Alene, and the incorporate limits of said village are hereby extended so as to include the same within such incorporate limits from the date this ordinance goes into effect, the same being contiguous and adjacent to the present incorporate limits of said village.

SECTION 2. The tracts of land lying contiguous and adjacent to the said village and hereby included by and in this ordinance within the corporate limits of said village are described as follows:

Sander's Addition, also Boughton and Kelso's Addition, also O'Brien's First Addition, also O'Brien's Second Addition, also O'Brien's Fourth Addition, also Reid's Addition, also Hunt's Addition, also the following tracts: commencing at a point on the shore of Lake Cœur d'Alene at the Southeast corner of the Fort Sherman Military Reservation, thence meandering the lake shore in an Easterly direction to the West line of Second Street of the village of Cœur d'Alene, thence North to the South line of the alley in Block Y, thence West 360 feet, thence North about 1840 feet, to the North line of the village of Cœur d'Alene, thence West about 100 feet to the Fort Sherman Military Reservation line, thence South along said Military Reservation line to place of beginning; also commencing at the Northwest corner of Lot 7, Section 13, Township 50 North, 4 West B. M., thence running East to the West line of the right of way of the Fort Sherman branch of the
138 Northern Pacific Railway, thence in a Southerly direction along the West line of said railway right of way to the South line of said Lot 7, thence West to the East line of Fort Sherman Military Reservation, thence North along the East line of said reservation to point of beginning; also commencing at the Southeast corner of Lot 7 of Section 13, township 50, North range 4 West, B. M., and running thence West 300 feet, thence at right angles North 481 feet, thence at right angles East 300 feet, thence at right angles South 481 feet to place of beginning, including all land between the North and South boundaries mentioned above, lying East of the East line of Third Street of the village of Cœur d'Alene

SECTION 3. That the owners and person and persons who are now residing or may reside upon said above tracts of land, mentioned in section 2 of this ordinance, are hereby declared to be within the juris-

dictional limits of said village for municipal purposes of every kind, as well as all the residents and inhabitants of said land hereby included, and the civil and criminal jurisdiction of courts and officers of said village are hereby extended and declared to be in force over the same, which is by this ordinance annexed. All the original territory of the town of Cœur d'Alene and that annexed and made a part of the incorporation is subject alike to all the legal requirements, enactments and ordinances now in force in said village, as provided by law, and the jurisdiction of the Board of trustees hereby extends over the above described annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Passed its first reading at a special meeting of the Board of Trustees called for that purpose, held December 16, 1903.

Passed its second reading, under suspension of rules, at a special meeting of the Board of Trustees, called for that purpose, held December 16, 1903.

139 Passed its third and final reading, under suspension of the rules, and duly enacted as an ordinance of the village of Cœur d'Alene, Idaho, at a special meeting of the Board of trustees, called for that purpose, held December 16, 1903.

Approved December 16, 1903.

A. V. CHAMBERLIN,
Chairman of Board of Trustees.

Attest:
6 JAMES H. HARTE,
Village Clerk.

Published in the Cœur d'Alene Press, a weekly newspaper, published in the village of Cœur d'Alene, Idaho, in its regular issue, dated December 19, 1903.

JAMES H. HARTE,
Village Clerk.

140 *Ordinance No.* 95.

An ordinance extending the limits of the old town now village of Cœur d'Alene to include within the incorporate limits of said village certain following tracts of land contiguous and adjacent thereto.

Be it ordained by the chairman and board of trustees of the village of Cœur d'Alene, Kootenai County, Idaho,

SECTION 1. That all lands and real premises mentioned in the next succeeding section hereof be, and the same *is* hereby included within the incorporate limits of the village of Cœur d'Alene, and the incorporate limits of said village are hereby extended so as to include the same within such incorporate limits from the date this

ordinance goes into effect, the same being contiguous and adjacent to the present incorporate limits of said village.

SECTION 2. The tracts of land lying contiguous and adjacent to the said village and hereby included by and in this ordinance within the corporate limits of said village are described as follows:

Sander's Addition, also Boughton and Kelso's Addition, also O'Brien's First Addition, also O'Brien's Second Addition, also O'Brien's Fourth Addition, also Reid's Addition, also Hunt's Addition, also the following tracts: commencing at a point on the shore of Lake Cœur d'Alene at the Southeast corner of the Fort Sherman Military Reservation, thence meandering the lake shore in an Easterly direction to the West line of Second Street of the village of Cœur d'Alene, thence North to the South line of the alley in Block Y, thence West 360 feet, thence North about 1840 feet, to the North line of the village of Cœur d'Alene, thence West about 100 feet to the Fort Sherman Military Reservation line, thence South along said Military Reservation line to place of beginning; also commencing at the Northwest corner of Lot 7, Section 13, Township 50 North, 4 West B. M., thence running East to the West line of the right of way of the Fort Sherman branch of the
141 Northern Pacific Railway, thence in a Southerly direction along the West line of said railway right of way to the South line of said Lot 7, thence West to the East line of Fort Sherman Military Reservation, thence North along the East line of said reservation to point of beginning; also commencing at the Southeast corner of Lot 7 of Section 13, township 50, North range 4 West, B. M., and running thence West 300 feet, thence at right angles North 481 feet, thence at right angles East 300 feet, thence at right angles South 481 feet to place of beginning, including all land between the North and South boundaries mentioned above, lying East of the East line of Third Street of the village of Cœur d'Alene.

SECTION 3. That the owners and person or persons who are now residing or may reside upon said above tracts of land, mentioned in section 2 of this ordinance, are hereby declared to be within the jurisdictional limits of said village for municipal purposes of every kind, as well as all residents and inhabitants of said land hereby included, and the civil and criminal jurisdiction of courts and officers of said village are hereby extended and declared to be in force over the same, which is by this ordinance annexed. All the original territory of the town of Cœur d'Alene and that annexed and made a part of the incorporation is subject alike to all the legal requirements, enactments and ordinances now in force in said village, as provided by law, and the jurisdiction of the Board of trustees hereby extends over the above described annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Passed its first reading at a special meeting of the Board of Trustees called for that purpose, held December 16, 1903.

Passed its second reading, under suspension of rules, at a special meeting of the Board of Trustees, called for that purpose, held December 16, 1903.

142 Passed its third and final reading, under suspension of the rules, and duly enacted as an ordinance of the village of Cœur d'Alene, Idaho, at a special meeting of the Board of trustees, called for that prpose, held December 16, 1903.

Approved December 16, 1903.

A. V. CHAMBERLIN,
Chairman of Board of Trustees.

Attest.

6 JAMES H. HARTE,
Village Clerk.

Published in the Cœur d'Alene Press, a weekly newspaper, published in the village of Cœur d'Alene, Idaho, in its regular issue, dated December 19, 1903.

JAMES H. HARTE.
Village Clerk.

143 *Ordinance No.* 95.

An ordinance extending the limits of the old town, now village of Cœur d'Alene to include within the incorporate limits of said village certain following tracts of land contiguous and adjacent thereto.

Be it ordained by the chairman and board of trustees of the village of Cœur d'Alene, Kootenai County, Idaho.

SECTION 1. That all lands and real premises mentioned in the next succeeding section hereof be, and the same is hereby included within the incorporate limits of the village of Cœur d'Alene, and the incorporate limits of said village are hereby extended so as to include the same within such incorporate limits from the date this ordinance goes into effect, the same being contiguous and adjacent to the present incorporate limits of said village.

SECTION 2. The tracts of land lying contiguous and adjacent to the said village and hereby included by and in this ordinance within the corporate limits of said village are described as follows:

Sander's Addition, also Boughton and Kelso's Addition also O'Briens First Addition, also O'Brien's Second Addition, also O'Brien's Fourth Addition, also Reid's Addition, also Hunt's Addition, also the following tracts: commencing at a point on the shore of Lake Cœur d'Alene at the Southeast corner of the Fort Sherman Military Reservation, thence meandering the lake shore in an Easterly direction to the West line of Second Street of the village of Cœur d'Alene, thence North to the South line of the alley in Block Y, thence West 360 feet, thence North about 1840 feet, to the North line of the village of Cœur d'Alene, thence West about 100 feet to the Fort Sherman Military Reservation line, thence South along said Military Reservation line to place of beginning; also commencing at the Northwest corner of Lot 7, Section 13, Township 50

North, 4 West B. M., thence running East to the West line of the right of way of the Fort Sherman branch of the Northern
144 Pacific Railway, thence in a Southerly direction along the West line of said railway right of way to the South line of said Lot 7, thence West to the East line of Fort Sherman Military Reservation, thence North along the East line of said reservation to point of beginning; Also commencing at the Southeast corner of Lot 7 of Section 13, township 50, North range 4 West, B. M., and running thence West 300 feet, thence at right angles North 481 feet, thence at right angles East 300 feet, thence at right angles South 481 feet to place of beginning, including all land between the North and South boundaries mentioned above, lying East of the East line of Third Street of the village of Cœur d'Alene.

SECTION 3. That the owners and person or persons who are now residing or may reside upon said above tracts of lands, mentioned in section 2 of this ordinance, are hereby declared to be within the jurisdictional limits of said village for municipal purposes of every kind, as well as all the residents and inhabitants of said land hereby included, and the civil and criminal jurisdiction of courts and officers of said village are hereby extended and declared to be in force over the same, which is by this ordinance annexed. All the original territory of the town of Cœur d'Alene and that annexed and made a part of the incorporation is subject alike to all the legal requirements, enactments and ordinances now in force in said village, as provided by law, and the jurisdiction of the Board of trustees hereby extends over the above described annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Passed its first reading at a special meeting of the Board of Trustees called for that purpose, held December 16, 1903.

Passed its second reading, under suspension of rules, at a
145 special meeting of the Board of Trustees, called for that purpose, held December 18. 1903.

Passed its third and final reading, under suspension of the rules, and duly enacted as an ordinance of the village of Cœur d'Alene, Idaho, at a special meeting of the Board of trustees, called for that purpose, held December 16, 1903.

Approved December 16, 1903.

A. V. CHAMBERLIN,
Chairman of Board of Trustees.

Attest.
JAMES H. HARTE,
Village Clerk.

Published in the Cœur d'Alene Press, a weekly newspaper, published in the village of Cœur d'Alene, Idaho, in its regular issue, dated December 19, 1903.

JAMES H. HARTE,
Village Clerk.

146 Office of the City Clerk of the City of Cœur d'Alene,

KOOTENAI COUNTY, *State of Idaho, ss:*

I, Fred L. Tiffany, City Clerk of the City of Cœur d'Alene, Kootenai County, State of Idaho, do hereby certify that I have compared the foregoing with the original ordinance No. 95 as filed and recorded in the Ordinance Book in my office, and that the same is a full, true and correct copy of such original and of the whole thereof.

[Seal City of Cœur d'Alene, Kootenai County, Idaho.]

FRED L. TIFFANY,
City Clerk.

147 DEFENDANT'S EXHIBIT No. 2.

Ordinance No. 96.

An ordinance to include within and add to the corporate limits of the village of Cœur d'Alene, Kootenai County, Idaho, territory contiguous and adjacent thereto, particularly described in said ordinance.

Be it ordained by the chairman and board of trustees of the village of Cœur d'Alene, Kootenai County, State of Idaho:

SECTION 1. That under and by virtue of the laws of the State of Idaho, the following described territory contiguous and adjacent to the corporate limits of the village of Cœur d'Alene in the County of Kootenai, State of Idaho is hereby annexed and added to and included within the corporate limits of said village, to-wit:

O'Brien's Third Addition; Russell's Addition; North Park Addition; and that tract of land situated in the County of Kootenai, State of Idaho, commencing at a point 1166.4 feet North and 37½ feet east of the Southwest corner of the East ½ of the Northwest ¼ of Section 13, township 50, North Range 4 West of Boise Meridian, thence Northerly on and parallel with the East side of County road, which is a continuation of Fourth Street of the Village of Cœur d'Alene to the section line of said Section 13 thence East 264 feet along said section line, thence Southerly parallel with said road to a point 1166.4 feet Northerly of the South line of the said East ½ of the Northwest ¼, thence running West 264 feet to place of beginning.

SECTION 2. That the owners of said tracts of land are hereby declared to be within the jurisdictional limits of said village for municipal purposes of every kind as well as all the residents and inhabitants of said lands hereby included, and civil and criminal jurisdiction of Courts and officers of said village are hereby extended and declared to be in force over the same which is by this ordinance annexed. All the original territory of the village of Cœur d'Alene and that annexed and made a part of the corporation is subject alike to all the legal requirements, enactments and ordinances now in

force in said village, as provided for by law, and the jurisdiction of the board of trustees hereby extends over the above described
148 annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Passed its first reading at an adjourned regular meeting of the Board of Trustees, held February 10th, 1904.

Passed its second reading, under suspension of the rules, at an adjourned regular meeting of the board of trustees, held February 10th, 1904.

Passed its third and final reading and duly enacted as an ordinance of the village of Cœur d'Alene, under suspension of the rules, at an adjourned regular meeting of the board of trustees, held February 10th, 1904.

Approved February 10th, 1904.

A. V. CHAMBERLIN,
Chairman of Board of Trustees.

Attest:
JAS. H. HARTE,
Village Clerk.

Published in the Cœur d'Alene Press, a weekly newspaper of general circulation, in the village of Cœur d'Alene, in its regular issue of February 20th, 1904.

JAMES H. HARTE.
Village Clerk.

149 *Ordinance No. 96.*

An ordinance to include within and add to the corporate limits of the village of Cœur d'Alene, Kootenai County, Idaho, territory contiguous and adjacent thereto, particularly described in said ordinance.

Be it ordained by the chairman and board of trustees of the village of Cœur d'Alene, Kootenai County, State of Idaho:

SECTION 1. That under and by virtue of the laws of the State of Idaho, the following described territory contiguous and adjacent to the corporate limits of the village of Cœur d'Alene in the County of Kootenai, State of Idaho is hereby annexed and added to and included within the corporate limits of said village, to-wit:

O'Brien's Third Addition; Russell's Addition; North Park Addition; and that tract of land situated in the County of Kootenai, State of Idaho, commencing at a point 1166.4 feet North and 37½ feet east of the Southwest corner of the East ½ of the Northwest ¼ of Section 13, township 50, North Range 4 West of Boise Meridian, thence Northerly on and parallel with the East side of County road, which is a continuation of Fourth Street of the Village of Cœur d'Alene to the section line of said Section 13 thence East 264 feet

along said section line, thence Southerly parallel with said road to a point 1166.4 feet Northerly of the South line of the said East ½ of the Northwest ¼, thence running West 264 feet to place of beginning.

SECTION 2. That the owners of said tracts of land are hereby declared to be within the jurisdictional limits of said village for municipal purposes of every kind as well as all the residents and inhabitants of said lands hereby included, and civil and criminal jurisdiction of Courts and officers of said village are hereby extended and declared to be in force over the same which is by this ordinance annexed. All the original territory of the village of Cœur d'Alene and that annexed and made a part of the corporation is subject alike to all the legal requirements, enactments and ordinances now in force in said village, as provided for by law, and the jurisdiction of the board of trustees hereby extends over the
150 above described annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Passed its first reading at an adjourned regular meeting of the Board of trustees, held February 10th 1904.

Passed its second reading, under suspension of the rules, at an adjourned regular meeting of the board of trustees, held February 10th 1904.

Passed its third and final reading and duly enacted as an ordinance of the village of Cœur d'Alene, under suspension of the rules, at an adjourned regular meeting of the board of trustees, held February 10th, 1904.

Approved February 10th, 1904.

A. V. CHAMBERLIN,
Chairman of Board of Trustees.

Attest:
JAS. H. HARTE,
Village Clerk.

Published in the Cœur d'Alene Press, a weekly newspaper of general circulation, in the village of Cœur d'Alene, in its regular issue of February 20th, 1904.

JAMES H. HARTE,
Village Clerk.

151 *Ordinance No.* 96.

An ordinance to include within and add to the corporate limits of the village of Cœur d'Alene, Kootenai County, Idaho, territory contiguous and adjacent thereto, particularly described in said ordinance.

Be it ordained by the chairman and board of trustees of the village of Cœur d'Alene, Kootenai County, State of Idaho:

SECTION 1. That under and by virtue of the laws of the State of Idaho, the following described territory contiguous and adjacent to the corporate limits of the village of Cœur d'Alene in the County of Kootenai, State of Idaho is hereby annexed and added to and included within the corporate limits of said village, to-wit:

O'Brien's Third Addition; Russell's Addition; North Park Addition; and that tract of land situated in the County of Kootenai, State of Idaho, commencing at a point 1166.4 feet North and 37½ feet east of the Southwest corner of the East ½ of the Northwest ¼ of Section 13, township 50, North Range 4 West of Boise Meridian, thence Northerly on and parallel with the East side of County road, which is a continuation of Fourth Street of the Village of Cœur d'Alene to the section line of said Section 13 thence East 264 feet along said section line, thence Southerly parallel with said road to a point 1166.4 feet Northerly of the South line of the said East ½ of the Northwest ¼, thence running West 264 feet to place of beginning.

SECTION 2. That the owners of said tracts of land are hereby declared to be within the jurisdictional limits of said village for municipal purposes of every kind as well as all the residents and inhabitants of said lands hereby included, and civil and criminal jurisdiction of Courts and officers of said village are hereby extended and declared to be in force over the same which is by this ordinance annexed. All the original territory of the village of Cœur d'Alene and that annexed and made a part of the corporation is subject alike to all the legal requirements, enactments and ordinances now in force in said village, as provided for by law, and the jurisdiction of the board of trustees hereby extends over
152 the above described annexed territory all the jurisdiction that it now possesses.

This ordinance shall take effect upon its passage and publication in one issue of the Cœur d'Alene Press, a weekly newspaper of general circulation, published in the village of Cœur d'Alene, Kootenai County, Idaho.

Passed its first reading at an adjourned regular meeting of the Board of trustees, held February 10th 1904.

Passed its second reading, under suspension of the rules, at an adjourned regular meeting of the board of trustees, held February 10th 1904.

Passed its third and final reading and duly enacted as an ordinance of the village of Cœur d'Alene, under suspension of the rules, at an adjourned regular meeting of the board of trustees, held February 10th 1904.

Approved February 10th, 1904.

A. V. CHAMBERLIN,
Chairman of Board of Trustees.

Attest:
JAS. H. HARTE,
Village Clerk.

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Published in the Cœur d'Alene Press, a weekly newspaper of general circulation, in the village of Cœur d'Alene, in its regular issue of February 20th, 1904.

JAMES H. HARTE,
Village Clerk.

153 OFFICE OF THE CITY CLERK OF
THE CITY OF CŒUR D'ALENE,
Kootenai County, State of Idaho, ss:

I, Fred L. Tiffany, City Clerk of the City of Cœur d'Alene, Kootenai County, State of Idaho, do hereby certify that I have compared the foregoing with the original ordinance No. 96 as filed and recorded in the Ordinance Book in my office, and that the same is a full, true and correct copy of such original and of the whole thereof.

[Seal City of Cœur d'Alene, Kootenai County, Idaho.]

FRED L. TIFFANY,
City Clerk.

154 DEFENDANT'S EXHIBIT NO. 3.

Ordinance No. 215.

An ordinance declaring to be a part of, annexed to and included with the corporate limits of the City of Cœur d'Alene, State of Idaho, certain lands contiguous and adjacent to said City, which have been by the owners and proprietors thereof laid off into lots and blocks containing not more than 5 acres each, and certain Lands contiguous and adjacent to said city, which the owners or proprietors have sold or begun to sell off by metes and bounds in tracts not excee-ing 5 acres, designated and known as Tubb's Hill Addition to the town of Cœur d'Alene; Lakeview Park Addition to Cœur d'Alene; Lake Shore Addition to Cœur d'Alene; Tract of Chester Glass; Tract of Austin Corbin, 2nd; Tract of Consumers Company; Kaesmeyer's Addition to the village of Cœur d'Alene; Sander's Park Addition to town of Cœur d'Alene; Glenmore Addition to town of Cœur d'Alene; Springwater Addition to town of Cœur d'Alene; Tract of Angeline Muncey; Tract of Charles F. Montandon; Tract of Z. A. and Jesse R. Marsh; East End Addition; Tract of Z. A. Marsh and Jesse R. Marsh; Tract of Pink C. Mashburn; Williams Park Addition to town of Cœur d'Alene; Tract of J. J. Hill; Tract of J. J. Hill and Fred Armstrong; O'Brien's 6th Addition to town of Cœur d'Alene; Tract of W. L. Shaffer; Taylor's Addition to town of Cœur d'Alene; Tract of Philip S. Lantzy; Tract of Harriet Bell Wonnacott; Spokane Addition to the town of Cœur d'Alene; Tract of Thomas J. Yount and Adah F. Shaudy; Tract of Thomas Humphrey; Tract of Anne E. Yeyers; and Jessie Hackett; Tract of Nellie Des Voigne; Tract of H. C. Hugus; Tract of W. W. Gates; Glendalia Park; Tract of Taylor Brothers; Tract of C. H. Van Ness; Minnick's

Addition to town of Cœur d'Alene; Woodlawn Park; Tract of Isabella Maria Coville; Tract of George Coville; Tract of
155 Howard P. Coville; Tract of J. R. Williams; Tract of J. A. McCrea; Tract of Sylvester J. Daniels; Keller's Addition to town of Cœur d'Alene; Roche Park Addition to Cœur d'Alene; Tract of Johan P. Nordstrom; Tract of Hans A. Anderson; Tract of William Floyd; Tract of H. C. Hugus; Tract of James M. Robertson; Tract of Armand Perrenoud; and others; Tract of H. C. Hugus; Tract of Walter Decker; Tract of Charles B. Ladeau; Tract of E. J. Seymour; Nevin's Addition to town of Cœur d'Alene; Tract of Allen Stewart; Tract of William F. Hubbard; Tract of George Reid; Tract of Allen Stewart; Boothe Addition to Town of Cœur d'Alene; E. S. Minnick Tract; Charles Young tract; Barber's Addition; Louis Larson Tract; James K. Buchanan tract; S. H. Stadler tract; Joseph Schultz tract; Dena Roper tract; Tract of J. C. Clevenger; Craik Park; East La Crosse; College Addition; College Heights; Bratton Garden Tracts; Sub-division of Lot 19, Section 11, Township 50, North of Range 4, West of Boise Meridian, by F. S. Colquhoun; Tract of Frank X. Fruchtl and wife; Tract of Eberhavrd Balmes; Tract of Ed McGregor; Tract of Thomas Riley; Tract of Noah R. Palmeter; Tract of W. H. Bokel; Tract of Timothy McCarthy; Tract of John H. Stevens; Cotman Garden tract; Tract of Amelia M. Thompson; Tract of George W. Cain; Tract B of Lot 13, Section 11, Township 50, North of Range 4 West, of Boise Meridian, sub-divisions of Lots 4 and five, tract B of Lot 13, Section 11, Township 50, North of Range 4 West of Boise Meridian, by Mrs. Eva Hahn; Tract A of Lot 13, Section 11, Township 50 North of Range 4 West of Boise Meridian; Columbus Park; Marcott tract; Crawford's Park; Gwinn's Park; Forest Heights; Merriam Park; Sherman Park; Subdivision of Lot 37, Section 14, Township 50 North of Range 4 West of Boise Meridian; by May L. Rogers; Taylor's Park; Tract of Anna Belle Lafayette; Tract of Minnesota M. Lawson; Tract of Joseph Arehart; Tract of Elin Teolinda Gustafson; Tract of Florence M. Sweeney:

156 Be it ordained by the Mayor and City Council of the City of Cœur d'Alene, in the State of Idaho:

SECTION 1. That the following described tracts of land lying contiguous and adjacent to the City of Cœur d'Alene, and which have been by the owners or proprietors thereof, laid of- into town lots or blocks containing not more than five acres each, and which has been sold or begun to be sold off by metes and bounds, in tracts not exceeding five acres, and towit: Tubb's Addition; Located in lots 1 and 2 of Section 24, in Township 50 North of Range 4 West, B. M.; consisting of blocks one to 13 inclusive.

Lakeview Park Addition to Cœur d'Alene; being a portion of land lying east of Tubb's Addition; in Lots one and 2, Section 24, Township 50 North of Range 4 West, B. M.

Lakeshore Addition; in the North east ¼ of the North east ¼ and lot 5, of Section 24, Township 50 North of Range 4 West, B. M., also a portion of the northwest ¼ of the north east ¼ of said sec-

tion, beginning at the south east corner of said north east ¼, thence West along south boundary of said north west ¼ of north east ¼ 502.4 feet, thence north 30 degrees, 41 minutes West 93.1 feet to point 80 feet north of said south boundary line, thence east 649.86 feet to east boundary line of said north west ¼ of north east ¼, thence south 80 feet to beginning; also a portion of lot 4, Section 24, beginning at north east corner lot 4, thence south along east boundary line of lot F, 582.8, thence west 114.2, thence north 64 degrees and nine minutes west 112.47 feet, thence North 47 degrees and 1 minute West 213.28 feet, thence North 30 degrees and 41 minutes West 451.13 feet, to North boundary line of lot 4, 602.4 feet to place of beginning; all in section 24, Township 50 North of Range 4 West, B. M.

Tract of Chester Glass; commencing at a point 827.5 feet South and 439.2 feet East of center of Section 24, Township 50, North of Range 4 West, B. M., thence South parallel to North
157 and South center line of said Section 24, 190 feet to waters edge of Lake Cœur d'Alene, thence North easterly along water's edge of said lake to point on shore of said lake 590 feet South and 913.3 feet East of said center of said Section 24, thence West, 200 feet, thence South westerly along a curve 408.8 feet to place of beginning.

Tract of Austin Corbin, 2nd; Beginning at a point on meander line of Lake Cœur d'Alene 86 feet South and 1807.6 feet West of center of section 24, Township 50, North of Range 4 West, B. M., said point marked by a clump of three pine trees, each of which is double chipped on two sides, thence Southerly and then Northerly along said meander line of lake around a small peninsula on what is known as Tubb's Point, on the shore of Lake Cœur d'Alene for 1000 feet to stone monument from which there is a large pitch pine stump about 10 feet north, thence north westerly 70 feet to stake marked "5" set in monument of stone, said monument being 250 feet South and 1553.6 feet West of center of said Section 24, thence North 57 degrees, .09 minutes West 302 feet, to place of beginning.

Tract of Consumers Company; Commencing at a point on meander line of Lake Cœur d'Alene and Lot 4 of Section 24, Township 50, North of Range 4 West, B. M., where said meander line is intersected by line running parallel with and 35 feet West of center line of intake pipe of said company's water system, thence parallel with said center line of said pipe line 600 feet to stake (course N. 25 degrees and 28 minutes W), thence North 66 degrees and 32 minutes East 125 feet, thence South 23 degrees and 28 minutes East and on line parallel with and 90 feet from center line of said pipe line 550 feet, to meander line of said lake, thence westerly and curving to South in a regular course along said meander line of said lake to place of beginning.

And also, commencing at a point on East line of reservoir of said Company on lot 4 extending northerly 75 feet from
158 North line of said reservoir, and thence North 60 degrees and 40 minutes East 150 feet, thence on line parallel with and
150 feet easterly from said East line of said reservoir South 29 de-

grees and 20 minutes, East 223 feet, thence South 60 degrees and 40 minutes West 283 feet, thence North 29 degrees and 20 minutes West 223 feet, thence North 60 degrees and 40 minutes East 133 feet to place of beginning.

Kaesmeyer's Addition to village of Cœur d'Alene; being a tract in the North half of the north west ¼ of Section 19, Township 50 North of Range 5 West, B. M., commencing at section corner between Sections 13 and 24, Township 50, North of Range 4 West, B. M. and sections 18 and 19, Township 50 North of Range 3 West, B. M., thence South along section line between said sections 24 and 19, 930 feet, thence East 530.8 feet, thence North 71 degrees and 34 minutes, East 126.6 feet, thence east 120 feet, thence North 71 degrees and 34 minutes East 126.6 feet, thence east 20 feet, thence South 71 degrees and 34 minutes East 147.6 feet, thence South 233.7 feet, thence East 164.7 feet, thence South 26 degrees and 34 minutes East 67.1 feet, thence East 35.2 feet, thence South 130 feet to South line of North ½ of north west ¼ of Section 19, Township 50 North of Range 3 West, B. M., thence East 704 feet to the east line of West ½ of North ½ of north east ¼ of North west ¼ of Section 19, thence North along East line 1320 feet to Section line between sections 18 and 19, Township 50 North of Range 3 West, B. M., thence West along said section line 1984.8 feet to place of beginning.

Sander's Park Addition to town of Cœur d'Alene; in the south west ¼ of the south west ¼ of Section 18, Township 50 North of Range 3 West, B. M.

Glenmore Addition to town of Cœur d'Alene; Commencing at a point on the center line of section 18, Township 50 North of Range 3 West, B. M., 320.16 feet North of the South ¼ corner, thence West 295.2 feet, thence South 320.16 feet, thence West along South line of Section 18, 316.4 feet, thence north 612.6 feet, thence
159 West 711.6 feet, thence North 713.7 feet, to North boundary line of South east ¼ of South west ¼ of Section 18, and the south west ¼ of south east ¼ of Section 18, thence East along said boundary 1970.2 feet, thence South 1325.8 feet to section line, thence West along said Section line 660 feet to quarter corner, thence North 320.16 feet, to place of beginning, being a portion of the south east ¼ of south west ¼ of Section 18; also West ½ of South west ¼ of South east ¼ of Section 18, Township 50, North of Range 3 West, B. M.

Springwater addition to town of Cœur d'Alene; in the South west ¼ of the North west ¼ of Section 18, Township 50, North of Range 3 West, B. M., and consists of Blocks 1 to 26 inclusive.

Tract of Angeline Muncey: being a portion of the south west ¼ of the North west ¼ of Section 18, Township 50, North of Range 3 West, B. M., commencing at a point 60 feet East and 30 feet North of the North east corner of Lot 26 of said *said* Springwater Addition to the town of Cœur d'Alene, thence North 296 feet, thence at right angles East 148 feet, thence at right angles South 296 feet, thence at right angles West 148 feet, to place of beginning.

Tract of Charles F. Montandon; beginning at a point 60 feet East

of South east corner of Lot 23 of Springwater Addition to Cœur d'Alene, thence at right angles North 296 feet, thence at right angles East 296 feet, thence at right angles South 296 feet, thence at right angles West 296 feet to place of beginning.

Tract of Z. A. and Jesse R. Marsh; Being a portion of the South west ¼ of the North west ¼ of section 18, Township 50, North of Range 3 West, B. M., commencing at a point 60 feet due East from the South east corner of Lot 26 Springwater Addition to town of Cœur d'Alene, thence North parallel with said Lot 26, 296 feet, thence at right angles East 148 feet, thence at right angles South 296 feet, thence at right angles West 148 feet, to place of
160 beginning.

East End Addition, Kootenai County, Idaho; beginning at the center of Section 18, Township 50, North of Range 3 West, B. M., thence North along the line between the North west ¼ and Northeast ¼ of Section 18, 894 feet, thence West 1342.8 feet, thence South 568 feet, thence East 34.9 feet, thence South 326 feet, thence East 25.1 feet, thence North 326 feet, thence East 734.9 feet, thence South 326 feet, to South boundary of Northeast ¼ of Section 18, thence East along said South boundary 556 feet to the place of beginning.

Tract of Z. A. Marsh and Jesse R. Marsh; Being a portion of the Southwest ¼ of the Northwest ¼ of Section 18, Township 50, North of Range 3 West, B. M., commencing at a point 208 feet East from the Southeast corner of Lot 26, Springwater Addition to the Town of Cœur d'Alene, thence North parallel with said lot 26, 296 feet, thence at right angles East 74 feet, thence at right angles South 296 feet, thence at right angles West 74 feet, to place of beginning.

Tract of Pink C. Mashburn; Commencing at a point 80 rods East and 30 feet North of the Southwest corner of the Northwest ¼ of Section 18, township 50 North of Range 3 West, B. M., thence East 760 feet, thence at right angles North 296 feet, thence at right angles West 760 feet, thence at right angles South 296 feet, to place of beginning.

William's Park Addition to town of Cœur d'Alene; Located in the Northwest ¼ of the Northwest ¼ of section 18, township 50, North of Range 3 West, of Boise Meridian, and contains Blocks 1 to 30 inclusive.

Tract of J. J. Hill; Being in the Northwest ¼ of the Northwest ¼ of section 18, township 50, North of Range 3 West of Boise Meridian and adjoining William's Park Addition to town of Cœur d'Alene as follows: Commencing at the South east corner of Lot 29 of said William's Park Addition, thence East 148 feet, thence at
161 right angles North 148 feet, thence at right angles West 148 feet, to the northeast corner of said Lot 29, thence at right angles South along the East line of said Lot 29, 148 feet to place of beginning.

Tract of J. H. Hill and Fred Armstrong; Being the tract adjoining Lots 17, 18 and 30, commencing at the Southeast corner of said lot 18, William's Park Addition, thence North along the East line of lots 18 and 17, 296 feet to the Northeast corner of lot 17, thence at

right angles East 148 feet, thence at right angles South 296 feet and parallel with East line of lots 17 and 18, thence at right angles West 148 feet, to place of beginning. Also tract adjoining lot 30, beginning at the Southeast corner of the tract last above described by metes and bounds, thence South 178 feet, thence at right angles East 91 feet, thence Northwesterly in direct line 200 feet to place of beginning.

O'Brien's 6th Addition to town of Cœur d'Alene; Being a portion of the Southwest ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, commencing at a point 60 feet East of the Southeast corner of Block 11, O'Brien's Second Addition to town of Cœur d'Alene, thence East parallel with North line of O'Brien's fifth Addition 1420 feet to the East line of said section 13, thence North 300 feet, thence West 1420 feet to the East line of Eleventh Street, town of Cœur d'Alene, thence South along the East line of Eleventh Street 300 feet to the place of beginning.

Tract of W. L. Shaffer; Being a portion of the Southeast ¼ of the Northeast ¼ of section 13, township 50, North of Range 4 West of Boise Meridian, commencing at a point 30 feet West of the Southeast corner of the Northeast ¼ of section 13, thence West on the South line of said Northeast ¼ 290.2 feet, thence North at an angle of 90 degrees 110 feet, thence East at an angle of 90 degrees 288.2 feet to a point 30 feet West of the East line of said Northeast ¼, thence South parallel with said East line 110 feet to place of beginning.

162 Taylor's Addition to Cœur d'Alene; Being that portion of the South ½ of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian lying West of the West line of the right of way of the Inland Empire Railway Company, excepting a strip of land described as follows: beginning at the center of said section 13, thence North along the quarter section line between the Northeast and the Northwest ¼ of said section, 1323 feet to the line between the North ½ and the South ½ of said Northeast ¼, thence East on the last mentioned line 31 feet, thence South along West line of Eighth Street to the quarter section line between the North ½ and the South ½ of said section 13, thence East to the place of beginning.

Tract of Philip S. Lantzy; Beginning at a point 1111 feet North of the Southwest corner of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, thence North along the West line of said Northeast ¼, 105 feet, thence East to the West line of Eighth Street, thence South along said West line of Eighth Street, 105 feet to a point opposite place of beginning, thence West to place of beginning.

Tract of Harriet Bell Wonnacott; Being that portion of Section 13, township 50, North of Range 4 West of Boise Meridian, beginning at a point 63.44 feet East of the Southeast corner of Lot 6, Block 10, Taylor's Addition to town of Cœur d'Alene, thence 300 feet East along the center line of section 13, thence North 110 feet, thence West 300 feet, thence South 110 feet to the place of beginning.

Spokane Addition to the town of Cœur d'Alene; Being the Southeast ¼ of the North east ¼ of Section 13, township 50 North of Range 4 West of Boise Meridian.

Tract of Thomas J. Yount and Adah F. Shaudy; Commencing at a point 60 rods North and 24 rods East of the Southwest corner of the Northwest ¼ of the Northeast ¼ of section 13, township 50, North of Range 4 West of Boise Meridian, thence East 16
163 rods, thence North 20 rods more or less to North line of said section; thence West along section line 16 rods, thence South 20 rods to the place of beginning.

Tract of Thomas Humphrey; commencing at a point 60 rods North of the Southwest corner of the Northwest ¼ of the Northeast ¼ of section 13, township 50, North of Range 4 West, B. M., thence East 24 rods, thence North 20 rods, more or less, to North line of said section, thence West 24 rods, to North ¼ corner of section, thence in a Southerly direction 20 rods more or less to place of beginning.

Tract of Anna E. Meyers and Jessie Hackett; Being that portion of the Northwest ¼ of the Northeast ¼ of section 13, township 50, North of Range 4 West of Boise Meridian, Commencing at a point 40 rods North of the Southwest corner of the Northwest ¼ of the Northeast ¼ of said section, thence North along the ¼ line 15 rods, thence East 20 rods, thence North 5 rods, thence East 20 rods, thence South 20 rods, thence West 40 rods to the place of beginning.

Tract of Nellie Des Voigne; Being that portion of the Northwest ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, described as follows: Commencing at the Southwest corner of the Northwest ¼ of the Northeast ¼ of section 13, thence 20 rods North quarter line to the place of beginning, thence East 40 rods, thence North 20 rods, thence West 40 rods, thence South on quarter line 20 rods to place of beginning.

Tract of H. C. Hugus; Commencing at the Southwest corner of the North ½ of the Northeast ¼ of section 13, township 50, North of Range 4 West of Boise Meridian, thence North 20 rods, thence East 40 rods, thence South 20 rods, thence West 40 rods, to place of beginning, reserving a strip 2 rods wide along South side for road.

Tract of W. W. Gates; Commencing at a point 40 rods North of the Southwest corner of the Northwest ¼ of the Northeast
164 ¼ of section 13, thence North along the quarter line of said section 20 rods, thence at right angles East 40 rods, thence South 20 rods, thence West 40 rods to beginning, being five acres in the Northwest ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian.

Glendalin Park; Beginning at a point 342½ feet north and 25 feet East of the Southwest corner of the Northeast ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, thence East 635 feet, thence North 317½ feet, thence West 635 feet, thence South 317½ feet to place of beginning.

Tract of Taylor Brothers; Being a tract of land in the Northeast ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West B. M., commencing at a point 60 rods North of the South-

east corner of said Northeast ¼ of the Northeast ¼, thence North 20 rods to the Northeast corner of said section, thence West along the North line of said section 40 rods to the East line of tract owned by J. R. Williams, thence at right angles South 20 rods to Northwest corner of tract owned by Cæser Masini, thence at right angles East 40 rods to place of beginning, containing 5 acres, less amount embraced in County road on East and North side-.

Tract of C. H. Van Ness; Being a portion of the Northeast ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West o. Boise Meridian, described as follows: Commencing 25 feet North of and 372½ feet East of the Southwest corner of said Northeast ¼ of Northeast ¼ of said section 13, thence East 287½ feet, thence North 75¾ feet, thence West 287½ feet, thence South 75¾ feet to the place of beginning.

Minnick's Addition to town of Cœur d'Alene; Being a portion of the Northwest ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian (not described by metes and bounds).

Woodlawn Park; Being the East ½ of the Northwest ¼ of the Northeast ¼ of section 13, township 50 North of Range 4
165 West of Boise Meridian, excepting strip 30 feet wide along the East side of said tract.

Tract of Isabella Maria Coville; Being a portion of the Northeast ¼ of the Northeast ¼ of section 13, township 50, North of Range 4 West of Boise Meridian, commencing at the Southeast corner of the Northeast ¼ of the Northeast ¼, thence North 40 rods, thence West 40 rods, thence south 40 rods to the South line of the North east ¼ of the Northeast ¼, thence East 40 rods to the place of beginning, 10 acres, less County road on East side.

Tract of George Coville; Being a portion of the Northeast ¼ of the North east ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, commencing at a point 40 rods North of the South East corner of said Northeast ¼ of Northeast ¼ of said section 13, thence 18 rods West, thence at right angles South 9 rods, thence at right angles East 18 rods, thence running North 9 rods to the place of beginning, less the county road.

Tract of Howard P. Coville; Being a portion of the Northeast ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, commencing at the Southeast corner of the Northeast ¼ of section 13, thence North 20 rods, thence at right angles West 40 rods, to the East line of the tract owned by J. R. Williams, thence at right angles South 20 rods to the South line of said Northeast ¼ of Northeast ¼, thence East 40 rods to place of beginning.

Tract of J. R. Williams; Being a tract in the Northeast ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, commencing at a point 40 rods North of the Southwest corner of said Northeast ¼ of Northeast ¼, thence East 40 rods, thence North 40 rods, to North line of section 13, thence West 40 rods to the Northwest corner of said Northeast ¼ of Northeast ¼, thence South 40 rods to place of beginning.

Tract of J. A. McCrea; Being a portion of the Northeast ¼
166 of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, commencing at a point 40 rods North of the South east corner of said Northeast ¼ of the Northeast ¼ of section 13, thence North along the East line of said section 20 rods, thence at right angles West 30 rods to the East line of tract owned by J. R. Williams, thence at right angles South 20 rods to the Northwest corner of the tract owned by Isabella Maria Coville, thence at right angles East 40 rods to the place of beginning.

Tract of Sylvester J. Daniels; Being a portion of the Northeast ¼ of the Northeast ¼ of section 13, township 50 North of Range 4 West of Boise Meridian, commencing at a point 342½ feet North and 25 feet East of South west corner of said Northeast ¼ of Northeast ¼, thence 317½ feet North, thence 635 feet East, thence 317½ feet South, thence 635 feet West of beginning, reserving a strip 60 feet wide through the center of the above tract for highway.

Keller's Addition to town of Cœur d'Alene; Beginning at a point on the West line of said section 13 990 feet South of the Northwest corner thereof, thence East 660 feet, thence at right angles South 330 feet, thence at right angles West 660 feet, thence at right angles North 330 feet to the place of beginning.

Roche Park Addition to Cœur d'Alene; Commencing at a point 303 1/3 feet West from the South east corner of section 12, township 50, North of Range 4 West of Boise Meridian, thence North for 718 feet, thence East 303 1/3 feet, thence North 310 feet, thence West 1276 feet to the East line of the right of way of Hayden Lake branch of Spokane and Inland Empire Railway Company as now laid out, thence South 1230 feet along the East line of the right of way of said railroad to Harrison Avenue, thence East on said Harrison Avenue to the place of beginning.

Tract of John P. Nordstrom; Being a tract in the West ½ of the Southeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point on the West line of the West ½ of the Southeast ¼ of section 12 40 rods South of the Northwest corner, thence South 20 rods, thence at right angles
167 East 40 rods to beginning, being the South east corner of the tract herein conveyed, thence at right angles North 20 rods, Northeast corner, thence at right angles West 16 rods, Northwest corner, thence at right angles South 20 rods, Southwest corner, thence at right angles East 16 rods, Southeast corner, containing two acres.

Tract of Hans A. Anderson; Being a tract of land in the West ½ of the Southeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point on the West line of the West ½ of the Southeast ¼ of section 12, 462 feet South of the Northwest corner of said West ½ of the Southeast ¼ of Section 12; thence East 630 feet, thence at right angles South 198 feet, thence at right angles West 630 feet, thence at right angles North 198 feet, to place of beginning, containing 3 acres, less 30 feet from East side thereof for public road.

Tract of William Floyd; Being a part of the West ½ of the

Southeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point 1320 feet South and 480 feet West of the Northeast corner of said West ½ of the Southeast ¼, thence West 150 feet, thence North 130 feet, thence East 150 feet, thence South 130 feet to the place of beginning.

Tract of H. C. Hugus; Being a tract of land in the West ½ of the South east ¼ of section 12, township 50 North of Range 4 West, B. M., commencing at a point 40 rods South of the Northeast corner of said West ½ of the Southeast ¼ of said section, thence South 20 rods, thence at right angles West 40 rods, thence at right angles North 20 rods, thence at right angles East 40 rods to the place of beginning, reserves strip 30 feet wide off West side for public road, also except strip commencing at a point on the North line of the tract hereby conveyed 330 feet West of the Northeast corner, thence West 330 feet, thence at right angles South 33 feet, thence at right angles East 330 feet, thence at right angles North 33 feet to the place of beginning.

Tract of James M. Robertson; Being a tract of land in the
168 West ½ of the Southeast ¼ of Section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point on the East line of said West ½ of Southeast ¼ of section 12, 60 rods South of the Northeast corner thereof, thence West 40 rods, thence at right angles South 20 rods, thence at right angles East 40 rods, thence at right angles North 20 rods to the place of beginning, reserving a strip off the West side thereof 30 feet wide for public road.

Tract of Armand Perrenoud and others; Being a tract of land situated in the West ½ of the Southeast ¼ of section 12, township 50, North of Range 4 West of Boise Meridian, commencing at a point on the East line of said West ½ of the Southeast ¼ of section 12; 80 rods South of Northeast corner thereof, thence west 40 rods, thence at right angles South 40 rods, thence at right angles East 40 rods, thence at right angles North 40 rods to the place of beginning, excepting a strip 30 feet wide off the West side for public road.

Tract of H. C. Hugus; Commencing at the Northeast corner of the Northeast ¼ of the Southeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, thence West 1320 feet, thence South 330 feet, thence East 1320 feet, thence North 330 feet, containing 10 acres, excepting the right of way granted to F. A. Blackwell for railway right of way.

Tract of Walter Decker; Being a tract of land in the West ½ of the Southeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at the Northwest corner of said West ½ of Southeast ¼, thence East 630 feet, thence at right angles South 462 feet, thence at right angles West 630 feet, thence at right angles North 462 feet to the place of beginning less 30 feet off each side for public road.

Tract of Charles B. Ladeau; Commencing at a point 60 rods South of the Northwest corner of said West ½ of the Southeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian,

thence South 20 rods, thence at right angles East 40 rods,
169 thence at right angles North 20 rods, thence at right angles West 40 rods to the place of beginning.

Tract of E. J. Seymour; being a tract of land in the West ½ of the Southeast ¼ of Section 12, Township 50 North of Range 4 West of Boise Meridian, commencing at a point 80 rods South of the Northwest corner of said West ½ of Southeast ¼, thence South 20 rods, thence at right angles East 16 rods, thence at right angles North 20 rods, thence at right angles West 16 rods to place of beginning.

Nevin's Addition to the town of Cœur d'Alene; situated in and being a part of the West ½ of the South east ¼ of Section 12, township 50, North of Range 4 West of Boise Meridian (not described by metes and bounds).

Tract of Allen Stewart: Being a tract in the West ½ of the Southeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point 40 rods South and 300 feet West of the Northeast corner of said West ½ of Southeast ¼, thence West 300 feet, thence at right angles South 33 feet, thence at right angles East 300 feet, thence at right angles North 33 feet to the place of beginning.

Tract of William F. Hubbard; Being a tract of land in the West ½ of the Southeast ¼ of Section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point on the West line of the west ½ of the Southeast ¼ of section 12, 40 rods, South of the Northwest corner thereof and running thence South 20 rods, thence at right angles East 40 rods, thence at right angles North 20 rods, thence at right angles West 40 rods to place of beginning, excepting a strip 30 feet wide of the East end for public road.

Tract of George Reid; Being a tract of land in the West ½ of the Southeast ¼ of Section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point 60 rods South of the Northwest corner of the West ½ of the Southeast ¼ of Section 12, thence South 40 rods, thence at right angles East 40 rods, thence at right angles North 40 rods, thence at right angles West 40 rods to the place of beginning, excepting a strip 30 feet wide from off the East side for public road.

170 Tract of Allen Stewart; Being a part of the Northwest ¼ of the Southeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at the Northeast corner of the Northwest ¼ of the Southeast ¼ of section 12, thence West 630 feet, thence South 660 feet, thence East 630 feet, thence North to the place of beginning.

Boothe Addition to town of Cœur d'Alene; Being a part of the Southwest ¼ of the Northeast ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, (Not described by metes and bounds.)

E. S. Minnick Tract; Being a portion of the South ½ of the Northwest ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point 469.89 feet West of the Southeast corner of said South ½ of the Northwest ¼ of said section, thence

north at right angles 556.23 feet, thence at right angles West 783.11 feet, thence at right angles South 556.23 feet, to South line of said Northwest ¼, being a point in the center of the County road, which is an extension of Fourth Street, Town of Cœur d' Alene, thence East along said South line, 783.11 feet to place of beginning.

Charles Young Tract; Being a portion of the South ½ of the Northwest ¼ of Section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point on the East line of said tract 968.865 feet North of the Southeast corner of said South ½ of the Northwest ¼, thence West 615 feet, thence North 352.635 feet, thence East 615 feet to said East line, thence South 352.635 feet to the place of beginning.

Barber's Addition; Beginning at a point 352.63 feet South of the Northeast corner of the Southeast ¼ of the Northwest ¼ of section 12, township 50, North of Range 4 West of Boise Meridian and on the East line of said quarter section, thence South along said East line, 410 feet, thence West 1229.62 feet, to the East line of Fourth Street, thence North along the East line of Fourth
171 Street 410 feet, thence East 1229.42 feet to place of beginning.

Louis Larson Tract; Being a portion of the South ½ of the Northwest ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at the South East corner of said South ½ of the Northwest ¼ of section 12, thence West 156.63 feet, thence North 556.23 feet, thence East 156.63 feet, thence South 556.23 feet to place of beginning.

James K. Buchanan; Being a portion of the South ½ of the Northwest ¼ of Section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point 2427.71 feet West of the Southeast corner of said South ½ of the Northwest ¼ of said section, thence North at right angles 556.23 feet, thence at right angles West 207 feet, thence at right angles South 180 feet, thence Southeasterly following the curve of the Northern Pacific Railway Right of way to intersection of South line of said South ½ of the Northwest ¼ of said section 12, thence East along said South line to place of beginning. Also commencing at stone monument at the Northeast corner of Fort Sherman Military Reservation and thence West 116 feet, thence North 212 feet, thence Southeasterly following the curve of right of way of the Northern Pacific Railway to place of beginning.

S. H. Stadler Tract; Being a portion of the South ½ of the Northeast ¼ of section 12, township 50, North of Range 4 West of Boise Meridian, commencing at a point 313.26 feet West of the Southeast corner of said South ½ of Northeast ¼ of section 12, thence at right angles North, 556.23 feet, thence at right angles West 234.94 feet, thence at right angles South 556.23 feet to the South line of Northeast ¼, thence East along the South line 234.94 feet to place of beginning.

Joseph Schultz Tract; Being a portion of the South ½ of the Northwest ¼ of section 12, township 50, North of Range 4 West of

Boise Meridian, commencing at a point 2271.09 feet West
172 of the Southeast ¼ of said South ½ of Northwest ¼ of section 12, thence West 156.62 feet, thence North 556.23 feet, thence East 156.62 feet, thence South 556.23 feet to place of beginning.

Dena Roper Tract; Being a part of the South ½ of the Northwest ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point 2036.15 feet West of the Southeast corner of said South ½ of the Northwest ¼ of section 12, thence North at right angles 556.23 feet, thence at right angles West 156.63 feet, thence at right angles South 556.23 feet, thence at right angles East 156.63 feet to place of beginning.

Tract of J. Z. Clevenger; Being a portion of the South ½ of the Northwest ¼ of section 12, township 50 North of Range 4 West of Boise Meridian, commencing at a point 156.63 feet West of the Southeast corner of said South ½ of the North west ¼ of said section 12, thence North at right angles 556.23 feet, thence at right angles West 156.63 feet, thence at right angles South, 556.23 feet to South line of Northwest ¼, thence East along said South line to place of beginning.

Craik Park; Being Lot 25 of the abandoned Fort Sherman Military Reserve in section 11, township 50 North of Range 4 West of Boise Meridian.

East La Crosse; Being Lots 15 and 17 in section 11, township 50 North of Range 4 West of Boise Meridian.

College Addition; being Lot 21, in section 11, township 50 North of Range 4 West of Boise Meridian in Fort Sherman Abandoned Military Reservation, except that part of said Lot described as beginning at the Northwest corner of said Lot 21, thence East 295 feet, thence South 295 feet, thence West 295 feet, thence North 295 feet to place of beginning, 2 acres, being that part of said lot heretofore conveyed to School District.

College Heights; Being that part of Lot 18 in section 11, township 50 North of Range 4 West of Boise Meridian, commencing at a point on the South line of said Lot 18, 15.47 chains West from
173 Southeast corner of said Lot 18, thence West along said South line 4.08 chains to Southwest corner of said lot 18, thence North along West line of said lot 18, 4.38 chains, thence East parallel with the South line of Lot 18, 4.08 chains, thence South parallel eith the East line of Lot 18, 4.38 chains to place of beginning.

Bratton Garden Tracts; Being the South ½ of the South ½ of Lot 20, in abandoned Fort Sherman Military Reserve in Section 11, township 50 North of Range 4 West of Boise Meridian.

Subdivision of lot 19, section 11, township 50 North of Range 4 West of Boise Meridian by F. S. Colquhoun, contains Blocks- A and B.

Tract of Frank X. Fruchtl; and wife; Starting at the Northwest corner of Lot 14, section 11, township 50 North of Range 4 West of Boise Meridian, thence South 292 feet 6 inches, thence 150 feet East, thence North 292 feet 6 inches, thence 150 feet West to place of beginning.

Tract of Eberhavrd Balmes; Commencing at the Southwest corner of lot 14, section 11, township 50 North of Range 4 West of Boise Meridian, thence East on South line of lot 14, 150 feet, thence North parallel with West line of said lot 14, 292 feet, thence West parallel with the South line of said lot 14, 150 feet, to West line of said lot, thence South on West line of said Lot, 292 feet to place of beginning.

Tract of Ed McGregor; Being a portion of lot 14 in section 11, township 50 North of Range 4 West of Boise Meridian, commencing at the Northeast corner of said lot 14, thence West 130 feet on North line of said lot, thence South 315 feet parallel with the east line of said lot, thence East 130 feet parallel with the North line of said lot, thence North 315 feet on the East line of said lot to place of beginning.

Tract of Thomas Riley; Being that part of Lot 18 in section 11, township 50 North of Range 4 West of Boise Meridian, commencing at a point on the North line of Lot 18, 11.05 chains West of the Northeast corner of Lot 18, thence West along the North line
174 2.21 chains, thence South parallel with the East line of Lot 18, 4.37 chains, thence East parallel with said North line, 2.21 chains, thence North to place of beginning 4.37 chains.

Tract of Noah R. Palmeter; Being that part of lot 18 in section 11, township 50 North of Range 4 West of Boise Meridian, commencing at the Northeast corner of said lot 18, thence West along the North line of said lot 2.21 chains, thence South parallel with the East line of said lot 18, 4.37 chains, thence East parallel with the North line of said Lot 18, 2.21 chains, thence North along the East line of said Lot 18, 4.37 chains to place of beginning.

Tract of W. H. Bokel; Being that part of Lot 18, in section 11, township 50 North of Range 4 West of Boise Meridian, commencing at a point on the North line of said lot 18, 4.42 chains from the Northeast corner of said lot 18, thence West along said North line 2.21 chains, thence South parallel with the said East line of lot 18, 4.37 chains, thence East parallel with the North line of said lot, 2.21 chains, thence North, parallel with the East line of said lot, 4.37 chains to the place of beginning.

Tract of Timothy McCarthy; Commencing at a point on the South line of lot 18, in section 11, township 50 North of Range 4 West of Boise Meridian, 4.42 chains West of the Southeast corner of said lot 18, thence West along said South line 2.21 chains, thence North parallel with the east line of said lot 18, 4.38 chains, thence East parallel with the South line of said lot 18, 2.21 chains, thence South parallel with the East line of said lot 18, 4.38 chains to place of beginning.

Tract of John H. Stevens; Being that part of lot 18 in section 11, township 50 North of Range 4 West of Boise Meridian; commencing at a point on the South line of said lot 18, 6.63 chains West from the Southeast corner of said lot 18, thence West along the South line 4.42 chains, thence North parallel with the East line of said lot 4.38

chains, thence East parallel with the South line of said lot 4.42
175 chains, thence South parallel with the East line of said lot 18, 4.38 chains to place of beginning.

Cotman Garden Tract; Being the North ½ of the South ½ of Lot 20 in section 11, township 50 North of Range 4 West of Boise Meridian.

Tract of Amelia M. Thompson; Commencing at a point on the section line running North between sections 11 and 12, township 50 North of Range 4 West of Boise Meridian, 30 feet South of 1/8 section corner on said section line and corner to Government Lots 19 and 20, section 11, thence West from said point of beginning parallel with and 30 feet South from the North line of Lot 20, a distance of 262.6 feet, thence South parallel with the east line of Lot 20, 276 feet, thence East parallel with the North line of lot 20, 262.7 feet, to East line of lot 20, thence North on the East line of lot 20, 276.45 feet to point 30 feet South of Northeast corner of lot 20, being a part of the North ½ of Lot 20 in section 11, township 50, north of Range 4, West of Boise Meridian.

Tract of George W. Cain; Commencing at a point on the North line of Government lot 20 in section 11, township 50, North of Range 4 West of Boise Meridian, 30 feet South and 912.6 feet West of 1/8 section corner on section line on East side of lots 19 and 20, section 11, thence West 30 feet South and parallel with the North line of lot 20 from point of beginning 390 feet to a point 30 feet South on the Northwest corner of lot 20, thence South on west line of lot 20, 274.9 feet, thence East parallel with the North line of Lot 20 390 feet, thence North parallel with the East line of Lot 20, 274.9 feet to a point 30 feet South of the North line of lot 20, being the point of beginning, and being part of the North ½ of Lot 20, section 11.

Tract B of Lot 13, Section 11, Township 50 North of Range 4 West of Boise Meridian, being the South 285 feet of Lot 13 in section 11.

Subdivision of Lots 4 and 5, Tract B of Lot 13, section 11, Township 50, North of Range 4 West of Boise Meridian, by Mrs.
176 Eva Hahn.

Tract A of Lot 13, section 11, township 50 North of Range 4 West of Boise Meridian, being the Northern portion of Lot 13.

Columbus Park; Being Lot 50, in section 14, Township 50 North of Range 4 West of Boise Meridian.

Marcott Tract; Being Lot 36 in section 14, Fort Sherman Abandoned Military Reservation.

Crawford's Park; Lot 35, Section 14, Township 50 North of Range 4 West of Boise Meridian, Abandoned Fort Sherman Military Reserve.

Gwinn's Park; Lot 26 Abandoned Fort Sherman Military Reserve, in section 14, Township 50, North of Range 4 West of Boise Meridian.

Forest Heights; Lots 10, 11, 12, 13, 40, 41 and 42, Section 14, Township 50 North of Range 4 West of Boise Meridian.

Merriam Park; Lots 27, 28, 29, 30, 31, 32, 33 and 34, Section 14, Township 50 North of Range 4 West of Boise Meridian.

Sherman Park; Lots 43, 44, and 45 of Fort Sherman Abandoned Military Reservation, situated in section 14, Township 50 North of Range 4 West of Boise Meridian.

Subdivision of Lot 37, Section 14, Township 50 North of Range 4 West of Boise Meridian, by May L. Rogers.

Taylor's Park; Lot 15 and the South ½ of Lots 16 and 17, Abandoned Fort Sherman Military Reserve, situated in section 14, Township 50 North of Range 4 West of Boise Meridian.

Tract of Anna Belle La Fayette; Commencing at the stake on the West boundary of Lot 39, Fort Sherman Abandoned Military Reservation in Kootenai County, said stake being situated 300 feet North of the Southwest corner of Lot 39, thence North 190.8 feet to the North corner of Lot 39 at West boundary of Cœur d'Alene & Spokane Railroad right of way, thence southeasterly along the West boundary of said right of way 220 feet, thence West 107½ feet to place of beginning.

177 Tract of Minnestota M. Lawson; Being a portion of Lot 39, Section 14, township 50 North of Range 4 West of Boise Meridian, commencing at the Southwest corner of said Lot 39, thence East 107½ feet, thence North 300 feet, parallel with the West line of said Lot, thence West 107½ feet to the West line of Lot 39, thence South 300 feet on the West line of said Lot 39 to place of beginning.

Tract of Joseph Arehart; Commencing at a point 375 feet Northeast of the stake in the West boundary of Lot 39 of Fort Sherman Abandoned Military Reservation, thence Northeasterly 115 feet, thence Southeasterly parallel with right of way of Cœur d'Alene and Spokane Electric Railway 125 feet, thence Westerly 69⅓ feet to place of beginning.

Tract of Elin Teolinda Gustafson; Being a portion of Lot 39, Section 14, Township 50 North of Range 4 West of Boise Meridian, commencing at a point 120 feet North of the Southwest corner of Lot 39, thence North 60 feet, thence East 107½ feet, thence South 60 feet, thence West 107½ feet to place of beginning.

Tract of Florence M. Sweeney; Being a piece of land beginning at the Northwest corner of Lot 1, Block 3, Taylor's Park, thence North 6½ feet, thence East 132½ feet, thence South 6½ feet, thence West 132½ feet to place of beginning.

are hereby annexed to, included within, and declared to be a part of the said City of Cœur d'Alene, and within the corporate limits thereof.

SECTION 2: It is hereby made the duty of the City Clerk, upon the passage, approval and publication of this ordinance, to file with the County Recorder of Kootenai County, State of Idaho, a copy thereof, duly certified under the seal of the City of Cœur d'Alene to be a true and correct copy of said ordinance.

178 Office of the City Clerk of the City of Cœur d'Alene

KOOTENAI COUNTY,
State of Idaho:

I, Fred L. Tiffany, City Clerk of the City of Cœur d'Alene, Kootenai County, State of Idaho, do hereby certify that I have compared the foregoing copy with the original ordinance No. 215 as filed and recorded in the Ordinance Book in my office, and that the same is a full, true and correct copy of such original and of the whole thereof.

[Seal City of Cœur d'Alene, Kootenai County, Idaho.]

FRED L. TIFFANY,
City Clerk.

DEFENDANT'S EXHIBIT No. 4.

(Here follows diagram marked p. 179.)

CHART

TOO

LARGE

FOR

FILMING

DEFENDANT'S EXHIBIT No. 5.

(Here follows diagram marked p. 180.)

CHARTS

TOO

LARGE

FOR

FILMING

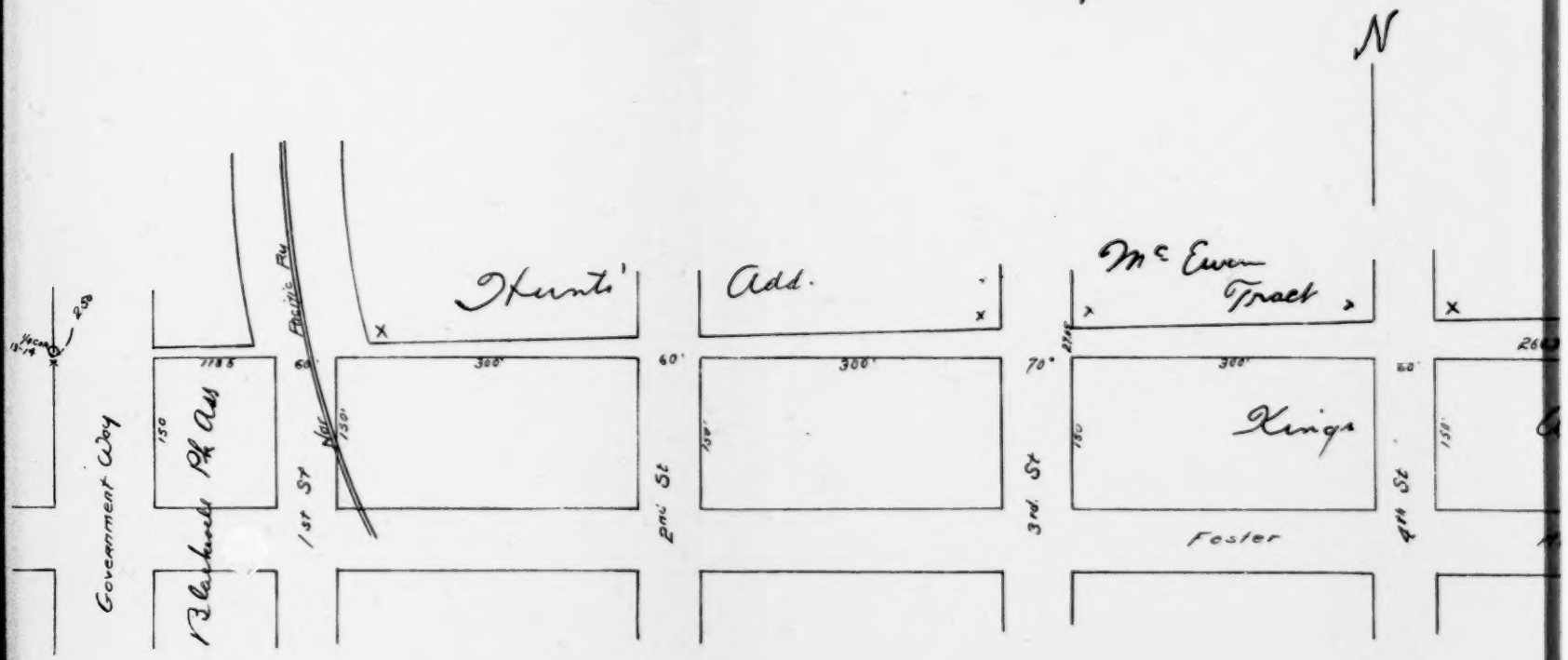
DEFENDANT'S EXHIBIT No. 7.

(Here follows diagram marked p. 182.)

DEFENDANT'S EXHIBIT No. 8.

(Here follows diagram marked p. 183.)

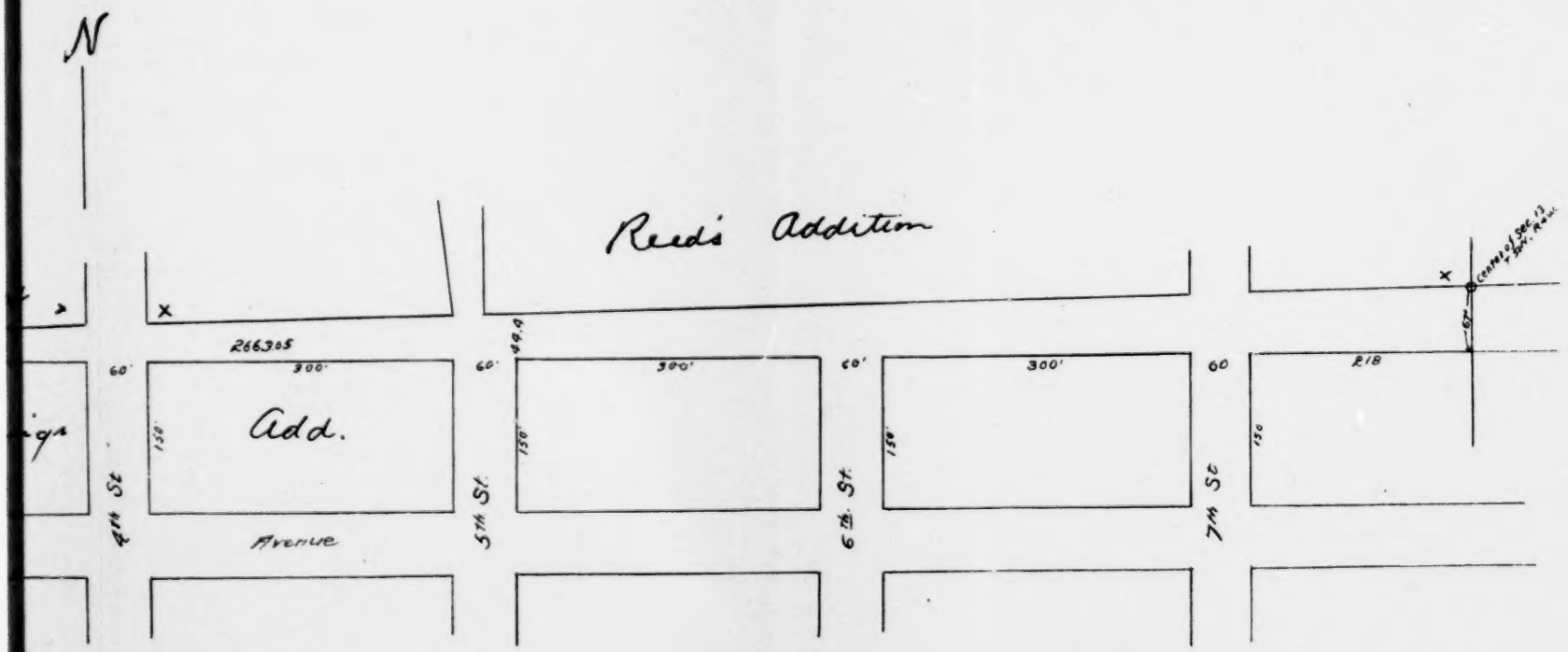
"Defendants Ex 8."



No 184
Consumers Co
v.
Hatch
} 6.183

Defendants Ex

Ex 8."



Defendants Ex 8

184 Filed Nov. 9, 1909. I. W. Hart, Clerk.

In the Supreme Court of the State of Idaho, September Term, 1909.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS COMPANY, LTD., a Corporation, Defendant.

Water Compay—Public Service Corporation—Subject of Public Regulation—Service Connection Supplying Consumer—Reasonable Rules and Regulations—Laying Mains on Ungraded Street—Extension of City Boundary—Implied Contract of Corporation—Confiscation of Property.

1. Under the franchise granted by the City of Cœur d'Alene to the Consumers Company to occupy the streets and alleys of the city for the purpose of supplying the city and inhabitants thereof with fresh water, the right and authority to dig in the streets and alleys and lay pipes therein for supplying consumers with water is conferred upon the company alone, and no such right is conferred upon the individual or consumer, and the consumer acquires no right to lay pipes or acquire property in the streets and alleys, but, on the contrary, the duty to do so and the rights acquired thereby belong to the water company. It is consequently the duty of the water company to supply and lay the laterals from its main to the line of a consumer's property abutting on such street, and such laterals are the property of the water company. Bothwell v. Consumers Co. 13 Ida. 568; and Pocatello Water Co. v. Stanley 7 Ida. 155, followed and approved.

2. Under the statute of this state, Sec. 2839 Rev. Codes, and the general rule of law applicable in such cases a water company may make and enforce such reasonable rules and regulations as
185 are in harmony with law and consonant with justice for the conduct of its business, the protection and preservation of its property, and the collection of its water rentals, and in so doing may require the consumer to pay reasonable water rentals in advance, or in default thereof shut off the water supply, or may require a month's rent to be paid at the end of the month, or in default thereof shut off the water until such time as the rent due is paid.

3. A water company cannot enforce a rule requiring a consumer to pay an old or disputed bill for water furnished him at some previous time, or some other and independent use, or at some other place or residence, or for a separate or distinct transaction from that for which he is claiming and demanding a water supply, as a condition precedent to supplying him with water, where he tenders payment of the established water rate in advance for the service he is demanding.

4. In such cases the parties are not upon equal grounds. The consumer's necessities for water for business, health, comfort, and life are such as to put him at a decided disadvantage and deprive

him of the right to contest an unjust claim; and it would, therefore, be unjust, unsafe, and contrary to public policy to invest a public service corporation with power to become both judge and jury in the determination of claims and demands it holds against the consumer.

5. "An ordinance of the city of Cœur d'Alene, passed and approved in the month of April, 1904, including the Krotzer addition to Cœur d'Alene city within the corporate limits thereof, was not void on account of an intervening strip of land 2663 ft. in length by 2.8 ft. wide at one end, and 67 ft. wide at the other. Sec. 9 of the Act of February 9, 1899, as appears at page 109, of the 1899 Sess. Laws, which was in force at the time of the adoption of the foregoing ordinance, provided that land or territory laid off
186 or subdivided as provided by statute "shall be regarded and treated as contiguous to such city or town, notwithstanding any stream or embankment or any strip or parcel of land not more than 200 feet in width may be or lie between such land or territory and the corporate limits of such city of town."

6. In the case where the city authorities have by ordinance extended the city limits so as to include an addition or tract of land and the inhabitants thereof, and all parties affected thereby have acquiesced in the action of the city authorities and have transacted their business upon the theory that such territory was included within the city limits, a public service corporation will not be allowed to question the validity of such action of the city council in a collateral attack after the lapse of five years.

7. Under the terms of a franchise ordinance wherein it is provided that the company receiving the franchise shall not be required to extend its water mains along any ungraded street or alley, no question as to the construction of such provision can arise in a case where the company has in fact extended its main along such ungraded street. After so doing the company cannot refuse to supply consumers along such street on the theory that it was not compelled to build along such street in the first place.

8. A corporation receiving a franchise from a municipality in this state authorizing it to supply the inhabitants with water, by accepting such franchise and attempting to operate thereunder, enters into an implied contract to serve all the inhabitants of such municipality without distinction or discrimination, upon the payment to it by such persons the established rates and complying with the reasonable rules and regulations of such company.

9. To compel a public service corporation to live up to the law of its existence and to discharge the duties for which it was
187 organized and for which it received its franchise can in no case amount to a confiscation of its property, or taking its property without due process of law, even though such requirement necessitates the corporation using a part or all of its property or investing its money in order to meet its duties and obligations.

10. There can be no element of confiscation or taking property without due process of law in a case where a writ of mandate is issued to compel a water company to put in laterals and service con-

nections from its main to the property line of an abutting owner at an expense of $8.50 where he tenders the monthly water rate of $1.50 in advance. In such case, the rental rate constitutes a fair and reasonable income and revenue on the sum invested, and compulsory service in such case contains no element of confiscation.

11. A public service corporation organized for the purpose of supplying the inhabitants of a municipality with water is not justified in assuming that the people it is to serve are dishonest, and that they will demand and pay for a month's water supply merely for the purpose of entailing upon the company the expense of putting in laterals and service connections and that they will thereafter refuse to take water and thereby discommode themselves and depreciate their own property, and the courts will not base decisions upon such an assumption.

(Syllabus by the court.)

Original action praying for a writ of mandate. Writ granted.

Reed and Boughton for plaintiff.

R. E. Elder and Gray & Knight for defendant.

188 AILSHIE, *J.*:

This is an original action commenced in this court, praying for the issuance of a writ of mandate against the defendant corporation, requiring and commanding that it connect plaintiff's water pipes with defendant's water system in the city of Cœur d'Alene.

The complaint alleges that the plaintiff is the owner of a lot or tract of land in Krotzer's Addition to Cœur d'Alene city and that he has built a dwelling house thereon and has placed water pipes therein, extending from his house to the curb line in Third Street in front of his premises.

He alleges that the water rate for the service he requires and has demanded is $1.50 per month payable in advance, as fixed by the water commissioners, appointed in conformity with the law for the establishing of water rates to be charged by the defendant company. He also alleges that he tendered the company, at its office, one month's water rent, and demanded that it make the connections and turn on the water for his use; "that the company thereupon refused and declined to do so unless he would also pay it the sum of $8.50 for making the tap in its water main, or deposit the sum of $15.00, the same to be refunded when the tap is taken out, less the actual cost of labor and cost of one corporation cock, or in lieu thereof that he should deposit $40. in cash, the same to be applied on payment of water to be used from said tap;" that the company now is and has been for more than five years last past operating in the village of Cœur d'Alene, under the terms of a franchise of the village embodied in ordinance No. 93 of said village, and that it is collecting monthly water rates in advance for water furnished to the inhabitants of the village; that the water rates have been established by a commission appointed in conformity with law, and which
189 said commission established rates to be charged on the 14th day of October, 1907; and that the rate so established that

applied to a service such as plaintiff demands is $1.50 per month; that the defendant company has a water main on Third Street in front of plaintiff's property, and is furnishing other consumers along that street with water for which it is charging and receiving the sum of $1.50 per month in advance; that the company has an abundant supply of fresh water unsold and is able to supply the plaintiff with all the water he demands.

Plaintiff prays that a writ of mandate issue against the defendant requiring and compelling it to make the necessary connection with its water main and supply plaintiff with water upon receipt of the rental rates as established by the board. An alternative writ of mandate was issued against the defendant and it has answered, admitting plaintiff's demand, and that it has a water main upon Third Street in front of plaintiff's house, and that it has refused to supply the plaintiff with water unless he accede to its requirements as set out in plaintiff's complaint.

Defendant has also pleaded further matter in defense of the action, in substance as follows: That prior to the construction by plaintiff of the house for which he now claims a water supply, plaintiff carried water from the faucet at the houses of some of defendant's water consumers, for which he became indebted to the defendant in the sum of $28.00, which sum the plaintiff has neglected, failed and refused to pay, and that the defendant refused to supply plaintiff with water in the future until such time as he paid the balance due for water previously supplied to him in the manner above mentioned.

It also alleges that plaintiff's property is not within the corporate limits of Cœur d'Alene city.

It further alleges that commissioners have heretofore been appointed in conformity with the law for the purpose of fixing
190 rates to be charged by the defendant, and that in pursuance of the power and authority vested in them they met and fixed and established rates, and that the rate to be charged for service such as plaintiff demands is $1.50 per month in advance, and the further sum of $8.50 for making "water service connections;" and that the company has made and established a rule that where demand is made to have water supplied to a place that has not previously been receiving water it requires that the applicant pay one month's rent in advance, and also the sum of $8.50 for tapping its main and making connections, or deposit the sum of $15.00, the same to be refunded when tap is taken out, less actual cost of labor and cost of one corporation cock, or a deposit of $4.00 cash, the same to apply on payment of water used.

Defendant alleges that the plaintiff declined and refused to comply with the rules and regulations of the company with reference to these several deposits, with the exception of the $1.50 monthly water rate, and that the defendant accordingly declined and refused to make the connection and furnish plaintiff with water.

It is also alleged that the commissioners took into consideration the payment of $8.50 for making tap and service connection in the fixing of monthly water rates.

On motion of the plaintiff, the court made an order striking from defendant's answer that portion thereof relating to the "rate to be charged for making service connections" as established by the commissioners, for the reason that under the provisions of our statute, Sec. 2839 R. C., the commissioners had no authority to fix any rates except "the rates to be charged for water." They had no authority to fix rates or charges for the construction or alteration of any part of the defendant's pipes or water system, and had no
191 authority to establish any rate for any labor or service or material or thing, other than for the use of water to be supplied by the corporation.

The court also sustained the plaintiff's motion to strike from the answer all the allegations with reference to the failure and neglect and refusal of the plaintiff to pay the sum of $28.00, balance due for water used by the plaintiff while residing at a different place and carried by him from a faucet at the residences of some of defendant's other consumers. The court thereupon ordered a reference to take testimony, and upon the coming in of the report and the submission of all the evidence on the part of both plaintiff and defendant the case was argued by the respective counsel and has been submitted for our final determination.

We have heretofore held in Bothwell v. Consumers Company, 13 Ida. 568, and Pocatello Water Co. v. Stanley, 7 Ida. 155, that the mains and laterals laid within the streets and alleys are the property of the water company, and that the franchise granted such company authorizes it to dig in the streets and alleys and use and occupy them for the purpose of laying and maintaining their pipe lines and delivering water to consumers. We discover no reason for departing from the rule announced in those cases. (See also Sec. 2840 R. C.) On the other hand, the consumer has no right or franchise to excavate the streets or to lay or maintain pipes therein. When he undertakes to pass beyond his property line with pipes he is met by the public authorities and the franchise held by the water company. He is in no position to acquire a property right in the streets and alleys by laying pipes therein. The water company, on the contrary, is clothed with this power and right and all the necessary authority for creating and establishing property rights therein and the protection of such property. There is no reason in saying that the company has no interest in laterals it may lay in the streets from its main to the line of abutting property owners. These laterals are of just as much use and as valuable to the com-
192 pany as its mains in proportion to the amount of water to be delivered through such laterals as compared with that delivered through the main. The only difference whatever is in the extent of the service. The capacity of a main is ordinarily such that it will supply a large number of consumers along the street from the one main; the capacity of a lateral is ordinarily such that it will only supply one or two consumers. The relative value to the company of the main and laterals is measured by the extent of the service from the two. The necessity, however, for one is just as great as for the other. Without a main none of the residents

along a street can be supplied. Without a lateral the individual consumer cannot be supplied. The law of ownership is the same in the one case as the other, and the right of property and control is the same in each instance. Water companies maintain water works for the purpose of collecting rates and tolls. They operate them for gain. In order to collect tolls they must deliver water. The consumer, on the other hand, pays his money for service. Unless he is served there is nothing for which he may be called upon to pay.

We are aware that some courts have held that the consumer may be required to pay the expenses of "service connections," as it is sometimes called, or rather for laterals extending from the curb line to the main. So far as we have been able to examine, however, these decisions are based upon express statutes. There is a line of decisions to that effect in Wisconsin. The case of Gleason v. Waukesha County, 79 N. W. 249, is a leading authority on this point and holds that the expense of laying water pipes from the curb line to connect with the main may be properly assessed against the property of the abutting owner, but this is based upon the express provision of the Wisconsin statute authorizing the levying of assessments against abutting property owners for such purposes "whenever the council shall order the paving or re-paving of any street in which water, gas mains and sewer or either of them, shall have been previously laid or constructed." In that case it
193 was claimed that the statute was unconstitutional in that it authorized a taking of property without due process of law. The court upheld the statute on the ground that the laying of the gas and water pipes was an improvement to the property of the abutting owners and that it conferred a benefit. We know of no case, however, that has held to such a rule in the absence of a statute or ordinance authorizing and providing for levying an assessment for such purposes.

Counsel for defendant seem to place great reliance on the case of Foley v. Hillyard Water Co., 94 Pac. 1080, but an examination of that case discloses that it was decided on entirely different grounds. As we read and understand that case, the court denied Foley relief on the grounds of waiver and estoppel by reason of his previous action and conduct in the matter. The question involved in the case at bar does not seem to have been urged or considered in that case.

In Haugen v. Albina Light & Water Co., 28 Pac. 244, in considering the respective rights and duties of the water consumer and the water company with reference to laying pipes and acquiring property rights in the streets, Justice Lord, speaking for the Oregon Supreme Court, said:

"The pipe which was laid by the defendant in Tillamook street was laid under the franchise granted by the city, and it had no authority to lay any other kind of pipe or main than prescribed by the ordinance, or for any other purpose than conducting water to supply the city and its inhabitants, without discrimination, to all persons having buildings or lots on the lines of their pipe, upon

tender of the proper compensation. There is no claim that Hughes and Prescott had any right to dig up the street, and to lay
194 such pipe. It could only be done by the defendant, so far as disclosed by this record, under the grant, in the mode prescribed, and for the purposes already stated."

As to the right of a water company to refuse to supply the consumer until he pays overdue rents, there is not entire harmony among the authorities. Farnum on Waters and Water Rights, Vol. 1, Sec. 164A, contains the following resumé of various decisions of the courts on this subject:

"A very effective method of compelling the payment of water rates is the stopping of further supplies until arrears are paid. There is nothing to compel either a municipality or a water company to furnish water to one who will not pay for it, and a regulation that in case a consumer is in default his supply will be cut off is reasonable and may be enforced. But such a regulation cannot be made the instrument by which the water company can become the judge in its own case, and shut off water to enforce payment of disputed bills. Nor, by its means, can payment be enforced which it is not the duty of the consumer to make. Nor can it be used as a means of collecting bills for independent matters not connected with the premises on which the water is desired."

On one phase of the question the authorities seem to be in entire harmony, and that is to the effect that a water company may make and enforce such reasonable rules and regulations as are in harmony with law and justice, for the conduct of its business and the collection of its water rentals. A regulation requiring a consumer to pay a month's rent in advance, or in default thereof the company will shut off the water, or requiring the consumer to pay at the end of the month the rates for the preceding month, or in default thereof the company will shut off the water, has generally been held
195 reasonable and within the power of such public service corporations. Tacoma Hotel Co. v. Tacoma Light & Water Co., 28 Pac. 516; 14 L. R. A. 669; Shepard v. Milwaukee Gaslight Co., 6 Wis. 539, 70 Am. Dec. 479; Harbison v. Knoxville Water Co. (Tenn.) 53 S. W. 993; Williams v. Mutual Gas Co., 52 Mich. 499; 18 N. W. 236; State v. Board of Water & Light Com'rs 117 N. W. 827; Cedar Rapids Gaslight Co. v. City of Cedar Rapids, 120 N. W. 966. The rules of some companies seem to require one month's payment in advance while others have required a quarter's payment in advance. It has been held, however, that a requirement that a consumer pay one year in advance was unreasonable. (Rockland Water Co. v. Adams, 84 Mo. 472).

It has likewise been held that where the water has been shut off from a consumer on account of a default in payment of rentals when due, he cannot be charged the additional sum of $1.00 for turning the water off and on. American Water Works Co. v. State, 30 L. R. A. 447, 50 Am. St. Rep. 610, 64 N. W. 711, 46 Nebr. 194.

It seems to be quite generally held by the authorities that such a company may not refuse to supply the water to a consumer upon payment of rents in advance as required by the rules and regulations

of the company, mere*my* because he declines and refuses to pay a disputed bill or to pay past due water rents for some other and independent use, or at some other place or residence, or for a separate or distinct transaction from that for which he is claiming and demanding a water supply. Crumley v. Watauga Water Co. 41 S. W. 1058; 99 Tenn. 420; Wood v. City of Auburn 29 L. R. A. 376; American Water-works Co. v. State, 30 L. R. A. 447; 64 N. W. 711.

A public service corporation cannot safely be invested with a power and authority which will allow it to become both judge and jury in the determination of a disputed claim due it from a consumer. To do so would be dangerous and investing it with a power that invites extortion and is too liable to be abused.

196 As was very aptly said by the Supreme Court of Maine in Wood v. Auburn, 87 Me. 287; 29 L. R. A. 376; 32 Atl. 906:

The parties are not upon equal ground. The city, as a water company, cannot do as it will with its water. It owes a duty to each consumer. The consumer, once taken on to the system, becomes dependent on that system for a prime necessity of business, comfort, health, and even life. He must have the pure water daily and hourly. To suddenly deprive him of this water, in order to force him to pay an old bill claimed to be unjust, puts him at an enormous disadvantage. He cannot wait for the water. He must surrender, and swallow his choking sense of injustice. Such a power in a water company or municipality places the consumer at its mercy. It can always claim that some old bill is unpaid. The receipt may have been lost, the collector may have embezzled the money; yet the consumer must pay it again, and perhaps still again. He cannot resist, lest he lose the water. * * * To oblige a person to follow such a course would be a violation of the fundamental juristic principle of procedure. * * * The water must be supplied to the complainant so long as he will promptly pay current installments, and otherwise conform to the reasonable rules governing the supply of water. The respondent must now, in its turn, resort to judicial process, if it desires to enforce any further payment."

The foregoing conforms to our idea of justice and comports with the principles of fair dealing. Such companies receive a public franchise for the purpose of serving the people for reasonable compensation, but they have no right to use the privileges granted for the purposes of oppression, discrimination, or harassing or annoying the water consumer. Courts will not tolerate any such conduct for a moment. In the case at bar the bill the defendant was seek-

197 ing to collect was for water alleged to have been used by plaintiff while residing at different places, and where he carried the water from the residences of other consumers, and the claim covers a period of over two years. This claim, if an obligation against plaintiff, was a wholly separate transaction and must be collected in the usual way in which debts are collectible. It cannot be wrung from the plaintiff by preying on his present rights and necessities for an essential to life and health.

It is argued by the defendant that plaintiff's property is not within the corporate limits of Cœur d'Alene city, and this conten-

tion grows out of the following conditions: In 1904 the city council passed an ordinance, known as ordinance No. 99, extending the city limits so as to include Krotzer's Addition, in which plaintiff's property is located. It appears from the evidence in the case, however, that there is intervening between the original boundary line of Cœur d'Alene city and this addition a strip of land 2663 feet in length by 2.8 feet wide at the westerly end and 67 feet wide at the easterly end. It also appears that this tract of land has never been included within the corporate limits of the city under any ordinance or resolution of the city council.

It is contended on behalf of the defendant that the action of the board in the passage of ordinance No. 99, incorporating the Krotzer Addition within the city limits, is void for the reason; first, that the city clerk failed to file a copy of ordinance No. 99 with the county recorder in accordance with the provisions of Sec. 2 of an act approved March 8, 1905, as appears at page 392 of the 1905 Session Laws, and which provision has been incorporated in section 2173 of the Rev. Codes. Whether or not this failure on the part of the clerk would defeat the purposes and objects of the ordinance is a question that we will not consider here, for the reason that this statute was not in force at the time of the passage and approval of ordi-
198 nance No. 99. The ordinance was passed and approved in April, 1904, whereas the statute invoked was not approved until March 8, 1905.

It is next urged that under the provisions of section 2172 of the Rev. Codes it is only competent for city or village authorities to incorporate within municipal boundaries the "land lying contiguous or adjacent" to the city, town, or village. It is contended that this addition was neither contiguous nor adjacent to the city of Cœur d'Alene while the strip of land above described was intervening between the city boundary and the addition laid out and platted. This contention is answered by the provisions of section 9 of the act of February 9, 1899, with reference to cities, towns, and villages, as appears on page 109 of the 1899 Session Laws. It provides, among other things, that land or territory laid off or subdivided as provided by statute "shall be regarded and treated as contiguous to such city or town, notwithstanding any stream or embankment or any strip or parcel of land not more than 200 feet in width may be or lie between such land or territory and the corporate limits of such city or town." Whether that provision of the statute be in force and effect now is immaterial. It is sufficient to say that it was in force and effect at the time of the passage and approval of ordinance No. 99 of the city of Cœur d'Alene, and completely answers the contention as to intervening territory between the original city limits and the Krotzer Addition.

Over and above the foregoing answers given to defendant's contention, there is another reason why defendant's position is not tenable here. The ordinance extending the city limits so as to include plaintiff's premises was passed and approved in April, 1904, and the city authorities proceeded at once to exercise municipal jurisdiction over the territory, levied and collected taxes, exercised police juris-

diction over the new territory, and so far as appears in this
199 action all parties acquiesced in the action of the city council, and proceeded to and did transact their business upon the theory and under the assumption that this addition was within the corporate limits of the city. This was not only true as to the plaintiff and Cœur d'Alene city, but it is true as to the defendant itself. It appears affirmatively from the record that the defendant operated its water plant on Third Street running through this addition upon the theory that it was within the corporate limits, and charged consumers therein the regular rates established by the water commission.

This is a collateral attack, and the water company could not be permitted at this late date and in this manner to raise a question of so serious import involving the jurisdiction and authority of the municipality. Kuhn v. City of Port Townsend, 41,Pac. 923; Clement v. Everest, 29 Mich. 19; Mullikin v. City of Bloomington, 72 Ind. 161; Frace v. City of Tacoma, 47 Pac. 219; McQuillin on Munic. Ord. Sec. 279; Coler v. Dwight School Tp., 55 N. W. 587, (589).

Defendant invokes the provisions of Sec. 10 of ordinance No. 93 granting it a franchise to operate within the corporate limits of Cœur d'Alene city, and contends that under that provision of the ordinance it cannot be compelled by mandamus to supply a water consumer on an ungraded street. That provision of the ordinance is as follows:

"Said Consumers company, its successors or assigns, may extend said distributing system of mains, pipes, laterals and other facilities along any of the streets or alleys of said village, whether such street or alley shall have been graded at the time of such extension or not, but shall not be required to extend the same along any ungraded street or alley."

It appears that Third street in front of plaintiff's premises is an ungraded street, but whatever might be said with reference
200 to the foregoing provision of the ordinance granting the franchise, it is a sufficient answer for the present case to say that notwithstanding this provision of the ordinance the defendant has laid its main along this street. It is already there, and therefore, needs no coercion for that purpose. It is consequently liable to supply the inhabitants along the street who tender the established water rates and demand service.

Finally, it is argued that to grant a writ of mandate in this case would amount to a confiscation of defendant's property and be in violation of the Fourteenth Amendment to the Federal Constitution. This contention cannot be sustained. The reasons are numerous against the position of defendant. In the first place, the defendant is a creature of the laws of this state created for a special purpose of a public character. It is not permitted like a private party to charge whatever it pleases or to serve those only whom it may choose to serve. It must, on the contrary, serve the inhabitants of the municipality from which it receives a franchise for a reasonable uniform compensation to be established in conformity with law (Sec. 2839, R. C.) and it must serve all persons without distinction or discrimination who pay the rate established and comply with the reasonable rules and regulations of the company. Secs. 1 and 2, Art. 15,

Const. of Idaho; Secs. 2839 and 2840 R. C.; Watauga Water Co. v. Wolfe 63 Am. St. Rep. 841; 99 Tenn. 429; 41 S. W. 1060; Am. Water Co. v. State 30 L. R. A. 447 (449); Haugen v. Albina Light & Water Co. 28 Pac. 244; Mahoney v. Am. Land & Water Co. 83 Pac. 267; Olmstead v. Proprietors 47 N. J. Law 311; Rushville v. Rushville Natural Gas Co. 15 L. R. A. 321 and note.

It was said by Chancellor Pitney in Long Branch Commission v. Tintern Manor Water Co. 62 Atl. 474, in speaking for the court of chancery of New Jersey that; "A company, which seeks and obtains a franchise to supply a certain territory with water for public and domestic uses is under a moral, and, in my judgment, a
201 legal obligation to furnish a supply which shall be equal to all emergencies which may be reasonably anticipated, including unusual droughts and unusual conflagrations, and to bear constantly in mind the prospective increase in population and a consequent increased demand for water."

To compel the defendant to live up to the law of its existence can in no case amount to a confiscation of its property, and still in every instance wherein it is compelled by compulsory process to do any given act, the exercise of such judicial power necessarily involves either the use of the company's property or the expenditure of its money. To abide by the law and discharge its public duties, however, is a part of the contract it impliedly enters into with the state and municipality when it receives its charter and franchise and commences business. For the discharge of these duties and obligations it agrees to invest money and acquire property and by that means serve the public indiscriminately for a reasonable compensation. When it neglects such duty it may be coerced by judicial process. This is not confiscation or taking property without due process of law. It is a procedure almost daily invoked throughout the country against irrigation companies, gas and light companies, and railroad companies, as well as water companies. There is nothing new or novel about it. The company must either live up to the requirements of the law, or when that becomes too burdensome it may go out of business, but it can't reap the benefits of its charter without assuming the duties thereof.

In this case the rates have been established, and the defendant makes no contention that the rates are too low or that it cannot make a fair income at the rates as established. It has never questioned these rates, and in fact from the evidence submitted in the record, it would seem that they are sufficient to net the defendant an exceptionally large return on the investment. Now those
202 rates were necessarily established on an estimate, among other things, of the total amount of investment and the number of consumers being served at the time the rates were fixed by the board. It is conceded that $8.50 will cover the total additional investment necessary to be made in order to serve the plaintiff and thereby secure the additional revenue of $1.50 per month or $18.00 per annum. This does not sound like confiscation to us. An income of $18.00 per annum on an investment of $8.50 is certainly a splendid profit. But the water company replies that it has no assur-

ance that the plaintiff will take water for more than one month. This argument leads to an inference that the water company wants someone to insure its perpetual income. While there can be no such thing as an absolute certainty that anyone of its consumers will continue to use water for a whole year or that they may not all quit using water at the end of the current month, yet it would be a violent and unjustifiable assumption to say that the plaintiff or any other consumer will only use water for one month. The defendant, like all individuals and corporations, must do business in a measure upon confidence and the assumption that the people with whom it is dealing are ordinarily honest, (Harbison v. Knoxville Water Co. 53 S. W. 993; Cedar Rapids Gaslight Co. v. Cedar Rapids, 120 N. W. 966) and that they are going to conduct their business in their own interests. It is scarcely likely that a man is going to build a dwelling house on his lot and fit it up with water pipes and pay for water for one month in order to force a public service corporation to expend $8.50 in making the necessary connections, and then depreciate his own property and discommode himself or his tenant by having the water shut off and thereafter doing without. Such an assumption is not sufficient on which to transact business and no individual or corporation would proceed upon such an assumption, and it is equally true that the courts are not going to render decisions on any such assumption. The common experience of mankind dis-
203 proves such a theory. It is possible, and indeed probable, that an occasional instance will arise where, for want of a tenant or some other sufficient cause, a proprietor may not receive water from the company regularly every month, but such a case will be the exception and will by no means constitute the rule. These exceptions will be no more frequent among the new consumers than among the old patrons of the company, and there can be no more excuse on this ground for refusing a new consumer water than there would be for refusing to supply one who has been previously receiving water. The supposition is that the rates received by the company are sufficient upon the whole to amply compensate the company for any such loss or diminution of rents as may arise from the exceptional instance where a consumer will cease to pay regular monthly water rates. This objection is entirely too imaginary, chimerical, and improbable to receive serious consideration from the hands of the court as a ground for denying an applicant a water supply upon the tender of the payment of the established rate.

It follows from what has been said that a peremptory writ of mandate must issue, commanding and requiring the defendant to make the necessary tap and connection with its water main and to supply plaintiff with water upon receipt of the monthly water rate heretofore tendered by plaintiff. The rule and regulation of the water company requiring the consumer to pay for the laterals and connections from its main to the street line of the consumer's property, is unreasonable and in conflict with the statute and charter and franchise under which the defendant is operating, and such regulation cannot be upheld by the court.

The writ will issue as prayed for by plaintiff, and the defendant

will be required to make return to the clerk of this court within thirty days from date of filing this opinion, showing that it has complied with the order of the court, and it is ordered and
204 decreed accordingly. Costs of this action will be taxed against the defendant.

Sullivan, C. J., and Stewart, J., concur.

205 Copy.

In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS COMPANY, LTD., a Corporation, Defendant.

Peremptory Writ of Mandate.

THE STATE OF IDAHO:

To Consumers' Company, Limited, a Corporation, Greeting:

Whereas, It manifestly appears to us by the affidavit of Albert L. Hatch, the plaintiff herein, and the party beneficially interested, that on the 22nd day of March, 1909, said Albert L. Hatch made to you an application in writing for water for domestic purposes, for the premises described in his said affidavit, and thereupon tendered to you the sum of one dollar and fifty cents for the first month's water rent, being the amount fixed by the commissioners appointed by law as the rate for such service, and that you refused to accept such tender, and failed and refused to furnish said plaintiff with water for such purposes, and that there is not a plain, speedy and adequate remedy in the ordinary course of law;

Therefore, We do command you, that immediately after receiving this writ you make the necessary tap in your water main to connect the same with the water pipe on plaintiff's premises, and that you do make such connection and furnish water to plaintiff for
206 domestic purposes, upon receipt of the monthly water rent, as heretofore, tendered to you by plaintiff, and that you make return to the clerk of this court within thirty days from the date of the issuance of this writ, showing that you have complied therewith.

Witness, The Honorable Isaac N. Sullivan, Chief Justice of the Supreme Court of the State of Idaho, this 9th day of November, 1909.

[SEAL.] I. W. HART, *Clerk.*

(Endorsed:) Peremptory Writ of Mandate. Filed on Return Nov. 17, 1909. I. W. Hart, Clerk.

STATE OF IDAHO,
County of Kootenai:

Henry Sawyer, being first duly sworn deposes and says:

That he is a duly appointed, qualified and acting deputy Sheriff of the County of Kootenai, State of Idaho, and not a party to the within action; that he received the within peremptory writ of mandate on the 13th day of November, 1909, and that thereafter and on said 13th day of November, 1909, personally served the same on the defendant, the Consumers' Company Limited, by delivering and leaving with J. W. Voelmeck, agent and cashier of said corporation, personally, at the office of the Consumers' Company, a true copy of said writ, together with the certified copy of the opinion of the Supreme Court attached thereto; and that at the same time paid to and left with said J. W. Voelmeck, for said defendant corporation the sum of One and 50/100 ($1.50) Dollars in payment for one month's water rent.

(Sgd.) HARRY SAWYER.

Subscribed and sworn to before me this 13th day of November, A. D. 1909.

(Sgd.) E. V. BOUGHTON,
Notary Public.
[SEAL.]

207 In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS COMPANY, LTD., a Corporation, Defendant.

Memorandum of Costs and Disbursements.

Clerk's Fees	$37.25
M. C. Russell, Serving affidavit for Mandamus	1.00
Fees of Court Reporter for taking and transcribing evidence, paid by plaintiff	33.10
Witness Fees, S. A. Varnum, two days at $3	6.00
1 Mile travel	.25
Witness Fees, Henry Bodler, one day	3.00
1 mile travel	.25
R. T. Morgan, City Clerk, Certified copy of ordinances Nos. 99 and 162	2.00
Fred L. Tiffany, City Clerk, certified copy of ordinance No. 162	1.25
Damages claimed by plaintiff under the provisions of sec. 4987 of the Rev. Codes, consisting of attorneys' fees and expenses from Cœur d'Alene to Boise, and from Cœur d'Alene to Lewiston	500.00
Total	$584.10

STATE OF IDAHO,
County of Kootenai, ss:

E. V. Boughton, being first duly sworn, deposes and says: That he is one of the attorneys for the Plaintiff in the above entitled action, and as such is better informed relative to the above costs and disbursements than is said plaintiff; that to the
208 best of his knowledge and belief the items in the above memorandum contained are correct; that the item of damages, consisting of costs and attorneys fees is a necessary and reasonable item of damages as provided by said section 4987 of the Revised Codes, and that said disbursements have been necessarily incurred in the said action.

(Signed) E. V. BOUGHTON.

Subscribed and sworn to before me this 13th day of November, A. D., 1909.

N. D. WERNETTE,
[SEAL.] *Notary Public.*

Service of the within cost bill is hereby accepted, by the receipt of a copy hereof, this 13th day of November, A. D., 1909.

GRAY & KNIGHT,
Attorneys for Defendant, Residence and Post-Office Address, Cœur d'Alene, Idaho.

The foregoing cost bill allowed in the sum of Eighty-four & 10/100 Dollars. The item of $500 for attorney's fees is disallowed.

(Signed) ISAAC N. SULLIVAN,
Chief Justice.

(Endorsed:) Filed Nov. 17, 1909. I. W. Hart, Clerk.

209 In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS COMPANY, LIMITED, a Corporation, Defendant.

Petition for Writ of Error.

To the Honorable Isaac N. Sullivan, Chief Justice of the Supreme Court of the State of Idaho:

The petition of the Consumers Company, Limited, a corporation organized and existing under the laws of the State of Idaho, respectfully shows:

That on the 9th day of November, A. D. 1909, the Supreme Court of the State of Idaho rendered a final judgment against your petitioner in a certain cause, wherein Albert L. Hatch was plaintiff and Consumers Company, Limited, was defendant, the said action being

an original proceeding in the Supreme Court of Idaho, granting a Writ of Mandate compelling your petitioner to lay certain service pipes and make certain connections with its water system at Cœur d'Alene, Idaho, and for costs, as will appear by reference to the record and proceedings in said cause, and that the said Court is the highest Court of said State in which a decision in said suit could be had.

And your petitioner claims the right to remove said judgment to the Supreme Court of the United States by Writ of Error, under Section 709 of the Revised Statutes of the United States;—

Because in said suit your petitioner claimed that the connection, fixtures, material and labor, which plaintiff demanded that
210 your petitioner furnish and perform, was for the separate and sole use and benefit of the plaintiff, and that if your petitioner was compelled to furnish such material and fixtures and was compelled to furnish the labor and make the necessary connections, it would deprive your petitioner of its property without due process of law in violation of Section 1 of Article 14 of Amendments to the Constitution of the United States, and the decision therein was against said claim so specially set up and claimed by your petitioner, and—

Because in said suit your petitioner claimed that under its contract with the City of Cœur d'Alene it was authorized to make a charge for the connection, fixtures, material, and labor furnished to the plaintiff, and that to compel your petitioner to furnish said labor, would impair the contract made between the City of Cœur d'Alene and said Company, in violation of Section 1 of Article 14 of Amendments to the Constitution of the United States, and the decision therein was against said right and privilege and claim specially set up and claimed by your petitioner under said constitution and statutes of the United States, and,—

Because in said suit your petitioner claimed that if it was compelled to furnish plaintiff the necessary material, fixtures and labor and make the necessary connections, which plaintiff demanded, without pay or security for the amount expended by your petitioner, it would take the property of your petitioner for a private use without allowing compensation therefor, contrary to the statutes and constitution of the United States, and the decision therein was against said claim so specially set up and claimed by your petitioner, and,—

Because in said suit your petitioner claimed that the cost of furnishing said material, fixtures and supplies and furnishing the labor and making the necessary connections, as required by the
211 plaintiff, would exceed the monthly rental offered by said plaintiff to your petitioner by the full sum of Seven Dollars ($7.00), and that if it should be required to make said connections and furnish the said material and fittings upon the terms prayed for by the plaintiff that it would result in a positive financial loss to your petitioner, and the decision therein was against said claim so specially set up and claimed by your petitioner, and,—

Because in said suit your petitioner claimed that $1.50 per month was not a reasonable income on the investment which the plaintiff demanded that your petitioner make, and that if required to make

the investment and furnish the plaintiff water at the rate of $1.50 per month it would take the property of your petitioner for a private use without allowing compensation therefor, and the decision therein was against said claim so specially set up and claimed by your petitioner, and,—

Because in said action your petitioner claimed that the property and labor, which the plaintiff was seeking to compel your petitioner to furnish to him, was for the sole and private use of the plaintiff, and that under its contract and the laws of the State of Idaho and the statutes and constitution of the United States, your petitioner could not be compelled to furnish said property and labor without compensation therefor, and the decision therein was against said claim so specially set up and claimed by your petitioner.

All of which appear in the record and proceedings of said cause, which is herewith submitted, and it appearing that error has happened to the great damage of your said petitioner;

Wherefore, your petitioner prays the allowance of a Writ of Error returnable into the Supreme Court of the United States, and
212 for citation and supersedeas, and such other process as may cause the same to be corrected by said Supreme Court of the United States.

Dated this 19th day of November, A. D. 1909.

CONSUMERS COMPANY, LIMITED,
A Corporation,
By ROB'T H. ELDER, *Its Attorney.*
MYRON A. FOLSOM,
GRAY & KNIGHT,
ROB'T H. ELDER,
Attorneys for Petitioner.

Let the Writ of Error issue as prayed.
Dated this 19th day of November, A. D. 1909.

ISAAC N. SULLIVAN,
Chief Justice of the Supreme Court of the State of Idaho.

212½ [Endorsed:] In the Supreme Court of the State of Idaho. Albert L. Hatch, Plaintiff, vs. Consumers Company, Limited, a Corporation, Defendant. Petition for writ of error. Filed this 22 day of November A. D. 1909. I. W. Hart, Clerk, By ——, Deputy.

213 In the United States Supreme Court.

CONSUMERS COMPANY, LIMITED, a Corporation, Plaintiff in Error,
vs.
ALBERT H. HATCH, Defendant in Error.

Admission of Service.

We, the undersigned, the Attorneys of Record of the above named defendant in error, hereby admit service of the Writ of Error, issued

herein, on the 19th day of November, A. D. 1909, by receipt of a true and correct copy thereof delivered to us by the Clerk of the Supreme Court of the State of Idaho.

REED & BOUGHTON,
F. W. REED,
EUGENE V. BOUGHTON,
Attorneys for Defendant in Error.

(Endorsed:) Admission of Service of Writ. Filed this 11th day of December, 1909. I. W. Hart, Clerk.

214 In the Supreme Court of the State of Idaho.

CONSUMERS COMPANY, LIMITED, a Corporation, Plaintiff in Error,
vs.
ALBERT L. HATCH, Defendant in Error.

Assignment of Errors.

Comes now Consumers Company, Limited, a corporation, plaintiff in error in the above entitled cause, and avers and shows that in the record, proceedings, decision and final judgment the Supreme Court of the State of Idaho in said cause erred to the gr-evious injury and wrong of the plaintiff in error, and to the prejudice and against the rights of the plaintiff in error in the following particulars, to wit:

I.

The judgment and proceedings of the Supreme Court of Idaho in this cause wherein plaintiff in error was defendant, were in violation of the rights of plaintiff in error as defined by Article 14, Section 1, of the amendments to the Constitution of the United States; that the said judgment and proceedings deprived said plaintiff in error of its property without due process of law, in this:

That by said judgment and proceedings, the said State of Idaho through its Supreme Court, has ordered the plaintiff in error to furnish to the defendant in error for his sole use and benefit, material, labor and fixtures without receiving any compensation whatever therefor; that it appears from the proceedings and judgment in this cause that defendant in error tendered to plaintiff in error the sum of One Dollar and fifty cents ($1.50) the compensation fixed by a certain water commission organized and created under and by virtue of the statutes of Idaho for the purpose of regulating rates to
215 be charged for water within the City of Cœur d'Alene, Idaho, which said rate of $1.50 per month was fixed by said commission as a reasonable cost for supplying water to individuals within the City of Cœur d'Alene, of a class to which said defendant in error herein belonged; and it further appears from the record that said water commission authorized the plaintiff in error to charge Eight Dollars and fifty cents ($8.50) being the actual cost of making a water connection from the water mains of plaintiff in error with

the property of defendant in error. And the record further shows that said plaintiff in error adopted a rule that it would furnish water connections upon the payment of actual cost, or upon the deposit of Fifteen Dollars, which said amount less the actual cost of installing and removing a connection should be returned to the consumer when he should cease to take water, or, third, upon the payment of $1.50 per month for water for the period of two years in advance, said plaintiff in error would furnish and install the said connection at its own expense. And it appears further from the record that defendant in error refused to pay the actual costs of said water connection, or refused to make the deposit aforesaid, or refused to pay for water for two years in advance; and it appears further from the record that defendant in error had prior to the application herein mentioned, failed to pay the plaintiff in error the sum of $28.50 being the value of water theretofore furnished within the city of Cœur d'Alene.

The Supreme Court of the State of Idaho, notwithstanding the foregoing facts, ordered and adjudged that a writ of mandate issue from said court commanding plaintiff in error herein to make said connection with the premises of the defendant in error without any compensation whatever, excepting the payment of $1.50 for one month's water rent, and without any deposit or agreement on
216 behalf of said defendant in error wherein and whereby he should bind himself to take and pay for water to such an amount as would return to plaintiff in error the cost of pumping said water, collecting water rent, repairing its machinery, mains, laterals, and plant, and a reasonable interest on its investment. And the judgment of the said Supreme Court of Idaho if enforced would constitute the taking of the property of the plaintiff in error without due process of law.

The Supreme Court of Idaho erred in holding that its said judgment would not deprive plaintiff in error of its property without due process of law.

II.

Sections 2839-2840 of Idaho Revised Codes, as given effect by the judgment and proceedings of said Supreme Court of Idaho impaired the obligation of a contract entered into between the City of Cœur d'Alene and the plaintiff in error, in violation of Section 10, Article 1, of the Constitution of the United States, in this:

It appears from the record in this cause that by the terms of a franchise granted by the City of Cœur d'Alene to plaintiff in error, it was provided that said plaintiff in error should not be required to extend its mains, pipes, laterals or other facilities along any of the ungraded streets or alleys of said village (now city) of Cœur d'Alene, and it appears from the said record and proceedings that the street upon which the house of defendant in error is built is ungraded, and by the judgment and proceedings of the Supreme Court of the State of Idaho herein plaintiff in error is compelled in violation of its contract with the village (now city) of Cœur d'Alene to extend its pipes and laterals and other facilities along an ungraded street, and

that said judgment therefore impairs the obligation of said
217 contract between the city of Cœur d'Alene and said plaintiff in error. And said judgment also for the same reason constitutes the taking of the property of the plaintiff in error without due process of law in violation of Article 14, Section 1, of the amendments to the Constitution of the United States.

III.

The said Supreme Court of Idaho erred in entering a judgment herein directing plaintiff in error to make a certain water connection at its own cost and expense and furnish labor and material therefor without any compensation whatever, said services being for the exclusive use of defendant in error; and the said water commission having fixed $1.50 per month as a reasonable charge for pumping said water, collecting dues, and as an interest on the investment, the judgment of the court ordering plaintiff in error to expend $8.50 for labor and material in addition to furnishing water at $1.50 a month would amount to the taking of property of plaintiff in error without due process of law, and without any compensation therefor.

Wherefore for these and other manifest errors appearing in the record, the said Consumers Company, Limited, a corporation, the plaintiff in error, prays that the judgment of the said Supreme Court of the State of Idaho be reversed, set aside and held for naught, and that judgment be rendered for the plaintiff in error, granting to it its rights under the statutes and laws of the United States; and plaintiff in error also prays a judgment for its costs.

(Signed) M. A. FOLSOM,
GRAY & KNIGHT,
ROB'T H. ELDER,
Cœur d'Alene, Idaho,
Attorneys for Plaintiff in Error.

(Endorsed:) Assignment of error. Field this 22nd day of November, A. D. 1909. I. W. Hart, Clerk.

218 In the Supreme Court of the State of Idaho.

ALBERT H. HATCH, Plaintiff,
vs.
CONSUMERS COMPANY, LTD., a Corporation, Defendant.

Bond.

Know all men by these presents: That we, Consumers Company, Limited, a corporation organized and existing under and by virtue of the laws of the State of Idaho, as principal, and The United States Fidelity and Guaranty Company of Baltimore, Md., as surety, are held and firmly bound unto Albert H. Hatch, in the sum of Two Thousand Dollars, $2000.00, to be paid to the said obligees,

their successors, representatives and assigns, to the payment of which well and truly to be made we bind ourselves, and each of us, and our successors and assigns jointly and severally firmly by these presents.

Sealed with our seals and dated this 19th day of November, A. D. 1909.

Whereas, the above named Consumers Company, Limited, a corporation, has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Idaho.

Now, therefore, the condition of this obligation is such that if the said Consumers Company, Limited, a corporation, shall prosecute said Writ of Error to effect, and answer all damages and costs, if it shall fail to make its plea good, then this obligation shall be void, otherwise to remain in full force and effect.

CONSUMERS COMPANY, LTD., A CORPORATION, [SEAL.]

(Signed) By ROBT. H. ELDER, *Att'y for Consumers Co.*

THE UNITED STATES FIDELITY AND GUARANTY COMPANY OF MARYLAND,

(Signed) By I. P. MARCELLUS.

(Signed) MORRISON & PENCE,

By MORRISON, *Att'ys in Fact.*

219 Attest:

(Signed) I. P. MARCELLUS, *Agent.*

Signed, sealed and delivered in the presence of:

(Signed) J. F. COLVIN,

(Signed) BELLE HART.

STATE OF IDAHO,
County of Ada, ss:

On this 19th day of November, A. D. 1909, personally appeared before me, J. F. Colvin, a Notary Public in and for Ada County, State of Idaho, I. P. Marcellus, who being first duly sworn, deposes and says: That he is the attorney in fact, and that I. P. Marcellus is the agent of the United States Fidelity and Guaranty Company, of Maryland, that the seal affixed to the foregoing instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and the said I. P. Marcellus acknowledged said instrument to be the free act and deed of said Corporation by authority of its Board of Directors, and the said I. P. Marcellus acknowledged said instrument to be the free act and deed of said corporation.

(Signed) J. F. COLVIN,
[SEAL.] *Notary Public.*

I hereby approve the foregoing bond and surety, this 20th day of November, A. D. 1909.

(Signed) ISAAC N. SULLIVAN,
Chief Justice Supreme Court of the State of Idaho.

(Endorsed:) Bond. Filed this 26th day of Nov. 1909. I. W. Hart, Clerk.

220 In the Supreme Court of the State of Idaho.

ALBERT L. HATCH, Plaintiff,
vs.
CONSUMERS COMPANY, LIMITED, a Corporation, Defendant.

Allowance of Writ.

Comes now consumers Company, Limited, the above named defendant, on this 19th day of November, A. D. 1909, and files and presents to this Court its petition praying for the allowance of a Writ of Error intended to be urged by *him*, and praying further that a duly authenticated transcript of the record, proceedings and papers, upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States, and that such other and further procedings may be had in the premises as may be just and proper, and upon consideration of the said petition, this Court desiring to give petitioner an opportunity to test in the Supreme Court of the United States the question therein presented, it is ordered by this Court that a Writ of Error be allowed as prayed, provided, however, that the said Consumers Company, Limited, defendant herein, give bond according to law in the sum of Two Thousand Dollars, $2000.00, which said bond shall operate as a supersedeas bond.

In testimony whereof, witness my hand this 19th day of November, A. D. 1909.

(Signed) ISAAC N. SULLIVAN,
Chief Justice of the Supreme Court of the State of Idaho.

(Endorsed:) Allowance of Writ. Filed this 22nd day of November, A. D., 1909, I. W. Hart, Clerk.

221 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Albert L. Hatch, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to a Writ of Error filed in the Office of the Clerk of the Supreme Court of the State of Idaho, wherein Consumers Company, Limited, a corporation, is

plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Idaho, this 22nd day of November, A. D. 1909.

ISAAC N. SULLIVAN,
Chief Justice of the Supreme Court of the State of Idaho.

Attest:

[Seal of Supreme Court, State of Idaho.]

I. W. HART,
Clerk of the Supreme Court of the State of Idaho.

CŒUR D'ALENE, IDAHO, *November* 30, '09.

I, attorney- of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation.

REED & BOUGHTON,
F. W. REED,
EUGENE V. BOUGHTON,
Attorneys for Defendant in Error.

221½ [Endorsed:] No. —. In the Supreme Court of the State of Idaho. Consumers Company, Ltd., Pl'ff in Error, v. A. L. Hatch, Def't in Error. Citation. Filed this 26 day of Nov. 1909. I. W. Hart, Clerk. Filed on Return, Dec. 10, 1909. I. W. Hart, Clerk.

222 *Certificate of Lodgment.*

SUPREME COURT,
State of Idaho, ss:

I, I. W. Hart, Clerk of the Supreme Court of the State of Idaho, do hereby certify that there was lodged with me as such clerk on November 26th 1909, in the matter of Consumers Company Limited, a corporation, Plaintiff in error, vs. Albert L. Hatch, Defendant in Error:

1. The original bond, of which a copy is herein set forth.
2. The original and two copies of the writ of error as herein set forth, the original to be sent up to the United States Supreme Court with the transcript of the record, one copy to be retained in my office, and the other copy lodged with me for the defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Boise, Idaho, this 26th day of November, 1909.

[Seal of Supreme Court, State of Idaho.]

I. W. HART, *Clerk.*

222½ [Endorsed:] No. —. In the Supreme Court of the State of Idaho. Consumers Company, Ltd., Pl'ff in Error, v. Albert L. Hatch, Def't in Error. Certificate of Lodgment. Filed this 26 day of Nov. 1909. I. W. Hart, Clerk.

223 In the Supreme Court of the State of Idaho.

CONSUMERS CO., LTD., a Corporation, Plaintiff in Error,

vs.

ALBERT L. HATCH, Defendant in Error.

Certificate of Clerk.

I, I. W. Hart, Clerk of the Supreme Court of the State of Idaho, do hereby certify the foregoing transcript to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court and that the same constitute the return to the annexed writ of error.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Supreme Court this 15th day of December, A. D., 1909.

[Seal of Supreme Court, State of Idaho.]

I. W. HART,

Clerk of the Supreme Court of the State of Idaho.

Endorsed on cover: File No. 21,957. Idaho Supreme Court. Term No. 184. Consumers Company, Limited, plaintiff in error, vs. Albert L. Hatch. Filed January 11th, 1910. File No. 21,957.

Supreme Court, U. S.
FILED.
DEC 4 1911
JAMES H. McKENNEY,
CLERK.

Brief of Plaintiff in Error

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1911

No. 184

CONSUMERS COMPANY, Limited,
Plaintiff in Error,
v.
ALBERT L. HATCH.
Defendant in Error

In Error to the Supreme Court of the State of Idaho

MYRON A. FOLSOM,
EDWARD S. ELDER,
ROBT. H. ELDER,
Attorneys for Plaintiff in Error.

Brief of Plaintiff in Error

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1911

No. 184

CONSUMERS COMPANY, Limited,
Plaintiff in Error,
v.
ALBERT L. HATCH.
Defendant in Error

In Error to the Supreme Court of the State of Idaho

MYRON A. FOLSOM,
EDWARD S. ELDER,
ROBT. H. ELDER,
Attorneys for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 184.

CONSUMERS COMPANY, LIMITED,
Plaintiff in Error.

vs.

ALBERT HATCH.

In Error to the Supreme Court of the State of Idaho.

By this Writ of Error, the Consumers Company, is seeking to have reviewed the judgment and writ of mandate, made and issued against the Company, by the Supreme Court of the State of Idaho and to determine whether or not the company can be compelled at its own cost to place a service connection between the property of the defendant in error Hatch, and the Company's main, without allowing the Company to regard the expense incurred as an investment and without allowing the Company a return on the investment thus made and to determine whether or not the Supreme Court has by its decision impaired the Company's contract with the city of Coeur d'Alene and whether or not the said decision of

said court deprives the plaintiff in error of its property without due process of law.

STATEMENT OF FACTS.

The Consumers Company is the owner of and is operating a water system in the city of Coeur d'Alene, under an ordinance from said municipality, known as ordinance No. 93. The provisions of said ordinance, in so far as they effect the questions in this case, are as follows:

"Section Three. Said Consumers Company, its successors and assigns, shall be entitled to charge and receive for water furnished for domestic purposes such rates as may be agreed by the inhabitants of said village and said Consumers Company, or its successors or asisgns, or such rate as may be fixed by the Water Commision provided by law; and to charge and receive for water used for power and purposes other than domestic uses, such rates as such Consumers Company may establish. (Trans. pg 19).

Section Ten. That said Consumers Company, its successors or assigns shall install and place in operation a system of pipes for distribution of water in said village, consisting of mains and laterals of diameters not less than those hereinafter specified, and laid substantially as follows:

A ten (10) inch main leading from said pumping station into the village of Coeur d'Alene by

such route along such streets or alleys as may be selected by said Consumers Company, its successor or assigns, to the intersection of Seventh street by Sherman street in said village; thence north along Sherman street to the village limits; an eight (8) inch main connecting with said ten (10) inch main at the intersection of Sherman and Seventh streets, extending west along said Sherman street to Second street; thence north on Second street to Coeur d'Alene street; thence west on Coeur d'Alene street to First street, thence north along First street to the present limit of said village; said ten (10) inch lateral extending along Seventh street, and said eight (8) inch main extending along Second and First streets, shall be connected by four (4) inch laterals laid on Lakeside avenue, Coeur d'Alene street, Lakeview street, Garden street, and Wallace and Foster streets; also a main four (4) inches in diameter connecting with said eight (8) inch main at the intersection of Sherman and Fourth streets, extending north along Fourth street to the intersection of Fourth street and Foster street; also a four (4) inch main connecting with said eight (8) inch main at Fourth and Sherman streets, extending south along Fourth street to Front street; thence east along Front street to its intersection and connection with the ten (10) inch

main leading from said pumping station to said distributing system; also a four (4) inch main connecting with said last described four (4) inch main at Front and Fifth streets, extending south along Fifth street to Mullan Avenue thence east on Mullan Avenue to its intersection and connection with said ten (10) inch main leading from said pumping station to said distributing system.

Provided, that mains and laterals to be laid on Lakeview and Wallace streets need not be laid by said company, its successors or assigns, until said streets shall have been graded by said village; said Consumers Company, its successors or assigns, may extend said distributing sytem of mains, pipes, laterals and others facilities along any of the streets or alleys of said village, whether such streets or alleys shall have been graded at the time of such extension or not, but shall not be required to extend the same along any ungraded street or alley." (Trans. pg. 20).

That Third street in the city of Coeur d'Alene was at all of the times herein referred to an ungraded street in the city of Coeur d'Alene and that the grade of said street had not been established, by the city of Coeur d'Alene.

That in August 1907, a commission authorized and appointed under the laws of the state of Idaho, Section 2711 1887 Revised Statutes of Ida-

ho, Section 2839 of the Revised Codes of Idaho, determined and fixed certain charges and rates for water service to be charged by said Consumers Company for furnishing water for domestic and family purposes to the inhabitants of the city of Coeur d'Alene.

The provisions of said statute are as follows:

"Section 2839. All persons, companies, or corporations supplying water to towns and cities, must furnish pure, fresh and healthful water to the inhabitants thereof for family use, business houses, lawns and all domestic purposes so long as thieir supply permits, without distinction of person, upon demand in writing therefor under such reasonable rules and regulations as the person, company or corporation supplying water, may, from time to time, establish, and at such rates as established in the manner hereinafter specified; and must also furnish water to the extent of its means in case of fire, or other great necessity, at reasonable rates established in the manner hereinafter specified.

"The rates to be charged for water must be determined by commissioners to be selected as follows: Two by the town or city authorities, or when there are no town or city authorities, then by the Board of County Commissioners

of the county, the two said commissioners so selected to be taxpayers of such town or city; said town or city authorities must, within ten days after the appointment of two commissioners so selected, give notice in writing to said person, company or corporation supplying water, of the appointment of such commissioners, and the names of each, and within thirty days thereafter two other commissioners, taxpayers of said town or city, must be selected by the person, company or corporation supplying water, and in case a majority of the four commissioners so selected cannot agree on the rates to be fixed, they must select a fifth commissioner, who must also be a taxpayer of such town or city, and if they cannot agree upon a fifth commissioner, then the Probate Judge of the county, must within ten days after notice to him by said commissioners, that they are unable to agree upon a fifth commissioner, select a fifth commissioner qualified as aforesaid. The decision of a majority of the commissioners thus selected must fix and determine the rates to be charged for water for all of the uses and purposes heretofore specified, for the ensuing three years from the date of such decision, and until new rates are established as herein provided. The decision of such commissioners so selected must be made within ninety days from the

date such board of water commissioners is complete: Provided, That any person, company or corporation supplying water, and failing or refusing within the time above specified to appoint such commissioners so required of them, shall forfeit the sum of one hundred dollars per day for every day thereafter and until such commissioners are appointed: Provided, further, That nothing in this section contained shall relieve said town or city authorities from their duty to appoint the commissions herein specified within a reasonable time after the granting of a franchise to any person, company, or corporation to supply water as aforesaid: Provided, further, That said commissioners shall receive a reasonable compensation for their services in establishing such water rates, and one-half of such expense shall be paid by the city or town and the other half by such person, company, or corporation supplying water."

The rates established under the foregoing Section, in so far as they relate to this proceeding, are as follows:

"RESIDENCE RATES."

For two faucets alone, or supplying water to any two of following: Sink, basin or lavatory, inside or outside of house regardless of the number of rooms contained therein, per month, One and

50-100 dollars ($1.50). (Trans. pg. 22).

"The price for making water service connections shall be as follows:

1-2 inch pipe .....$ 7.00
3-4 inch pipe 8.50
1 inch pipe 10.00

(Trans. pg. 26)."

That said rates and charges were in effect at all of the times herein mentioned and at the time the defendant in error applied to the Company for water service and that the same charges were made for like services to all other inhabitants in the city of Coeur d'Alene.

In March 1909, Hatch, who lived on an ungraded street and at that time was indebted to the Company in the sum of $28.50 for water furnished to him which he had neglected and refused to pay, applied to the Company for water service and demanded that the Consumers Company, at its own expense, make a service connection between his premises and the Company's main.

The service connection demanded by Hatch, under the charges and rates fixed by the Commission was Eight and 50-100 dollars ($8.50) for making the service connection with plaintiff's main and for furnishing material and laying the service pipes between Hatch's premises and the Company's main and the further sum of One and

50-100 dollars ($1.50), payable in advance for water rent for the first month at said premises.

The Company refused to make the service connection and furnish and lay the service pipes between the property line and plaintiff's main at its expense, unless the defendant in error, would pay the charge as determined and made by the Commission, to-wit: the sum of Eight and 50-100 dollars ($8.50), for said service, or unless the defendant would comply with the rules of the Company to the effect that it would make the service connection upon the deposit of Fifteen dollars ($15.00) which said amount less the actual cost of installing or removing the connection should be returned to the consumer when he should cease to take water, or upon the payment to the Company, for water for a period of two years in advance, said plaintiff would furnish and install the said connection at its own expense.

Hatch refused to pay the amount as provided and fixed by the water commission and also refused to comply with the alternatives provided by the company, under its rules and applied to the Supreme Court of the State of Idaho, for a writ of mandate, compelling the Company to make service connections with its main and lay the necessary service pipes and connect the same with the premises of Hatch and furnish to said defendant in

error, water for one month at his residence on the payment to said Company of the sum of One and 50-100 dollars ($1.50).

The service demanded by Hatch would cost the Company at least Ten dollars ($10.00). (Trans. pg 60).

On the 9th of November 1909, the Supreme Court of the State of Idaho, rendered judgment in favor of Hatch and issued its pre-emptory Writ of Mandate, compelling the said Company to make at its own cost, the necessary connections between its water main and Hatch's premises on tender or receipt of One and 50-100 dollars ($1.50). (Trans. pg. 143 to 155).

ASSIGNMENT OF ERRORS.

I.

The judgment and proceedings of the Supreme Court of Idaho in this cause wherein plaintiff in error was defendant, were in violation of the rights of plaintiff in error as defined by Article 14, Section 1, of the amendments to the Constitution of the United States; that the said judgment and proceedings deprived said plaintiff in error of its property without due process of law, in this:

That by said judgment and proceedings, the said State of Idaho, through its Supreme Court, has ordered the plaintiff in error, to furnish to

the defendant in error for his sole use and benefit material, labor and fixtures without receiving any compensation whatever therefor; that it appears from the proceedings and judgment in this cause that defendant in error tendered to plaintiff in error the sum of One and 50-100 dollars ($1.50) the compensation fixed by a certain water commission organized and created under and by virtue of the statutes of Idaho for the purpose of regulating rates to be charged for water within the city of Coeur d'Alene, Idaho, which said rate of One and 50-100 dollars ($1.50) per month was fixed by said commission as a reasonable cost for supplying water to individuals within the city of Coeur d'Alene, of a class to which said defendant in error herein belonged; and it further appears from the record that said water commission authorized the plaintiff in error to charge Eight and 50-100 dollars ($8.50) being the actual cost of making a water connection from the water mains of plaintiff in error with the property of defendant in error. And the record further shows that said plaintiff in error adopted a rule that it would furnish water connections upon the payment of actual cost, or upon the deposit of Fifteen Dollars ($15.00), which said amount less the actual cost of installing and removing a connection should be returned to the consumer when

he should cease to take water, or, third, upon the payment of One and 50-100 dollars ($1.50) per month for water for the period of two years in advance, said plaintiff in error would furnish and install the said connection at its own expense. And it appears further from the record that defendant in error refused to pay the actual cost of said water connection, or refused to make the deposit aforesaid, or refused to pay for water for two years in advance; and it appears further from the record that defendant in error had prior to the application herein mentioned, failed to pay the plaintiff in error the sum of Twenty-eight and 50-100 dollars ($28.50) being the value of water theretofore furnished within the city of Coeur d'Alene.

The Supreme Court of the State of Idaho, notwithstanding the foregoing facts, ordered and adjudged that a writ of mandate issue from said court commanding plaintiff in error herein to make said connection with the premises of the defendant in error without any compensation whatever, excepting the payment of One and 50-100 dollars ($1.50), for one month's water rent, and without any deposit or agreement on behalf of said defendant in error wherein and whereby he should bind himself to take and pay for water to such an amount as would return to plain-

tiff in error the cost of pumping said water, collecting water rent, repairing its machinery, mains, laterals, and plant, and a reasonable interest on its investment. And the judgment of the Supreme Court of Idaho, if enforced would constitute the taking of the property of the plaintiff in error without due process of law.

The Supreme Court of Idaho erred in holding that its said judgment would not deprive plaintiff in error of its property without due process of law.

II.

Sections 2839-2840 of Idaho Revised Codes, as given effect by the judgment and proceedings of said Supreme Court of Idaho impaired the obligation of a contract entered into between the city of Coeur d'Alene, and the plaintiff in error, in violation of Section 10, Article 1, of the Constitution of the United States, in this:

It appears from the record in this cause that by the terms of a franchise granted by the city of Coeur d'Alene, to plaintiff in error, it was provided that said plaintiff in error should not be required to extend its mains, pipes, laterals, or other facilities along any of the ungraded streets or alleys of said village (now city) of Coeur d'Alene, and it appears from the said record and proceedings that the street upon which the house of de-

fendant in error is built is ungraded, and by the judgment and proceedings of the Supreme Court of the State of Idaho herein plaintiff in error is compelled in violation of its contract with the village (now city) of Coeur d'Alene to extend its pipes and laterals and other facilities along an ungraded street and that said judgment therefore impairs the obligation of said contract between the city of Coeur d'Alene, and said plaintiff in error. And said judgment also for the same reason constitutes the taking of the property of the plaintiff in error without due process of law in violation of Article 14, Section 1, of the amendments to the Constitution of the United States.

III.

The said Supreme Court of Idaho erred in entering a judgment herein directing plaintiff in error to make a certain water connection at its own cost and expense and furnish labor and material therefor without any compensation whatever, said services being for the exclusive use of defendant in error; and the said water commission having fixed $1.50 per month as a reasonable charge for pumping said water, collecting dues, and as an interest on the investment, the judgment of the court ordering plaintiff in error to expend $8.50 for labor and material in addition to furnishing water at $1.50 a month would

amount to the taking of property of plaintiff in error without due process of law, and without any compensation therefor. (Trans. pg. 160).

We will contend: First. That the judgment and proceedings of the Supreme Court of the State of Idaho, in this case, is in violation of the rights of the Consumers Company, and deprives said Company of its property without due process of law.

Second. That the judgment and proceedings of the Supreme Court of the State of Idaho, impairs the obligations of the contract between the Consumers Company and the city of Coeur d'Alene.

I.

By the judgment and proceeding, the State of Idaho, through its Supreme Court, has ordered the Consumers Company, at its own expense to furnish to Hatch for his sole use and benefit material, labor and fixtures and make the necessary service connections and place service pipes between the Company's main and the premises of Hatch.

It appears from the record that the Water Commission authorized the Consumers Company, to charge the sum of Eight and 50-100 dollars ($8.50), being the actual cost of making the connection between Hatch's premises and the Com-

pany's main and it further appears from the record, that the Company, adopted a rule that it would furnish service connections upon the payment of the charges and rates as provided by the water commission, or upon the deposit of Fifteen dollars ($15.00) which said amount less the actual cost of installing and removing the connection and service pipe would be returned to the consumer when he should cease to take water, or upon the payment of water rent in advance for two years, but Hatch refused to pay the amount provided by the water commission and refused to be governed by the rules adopted by the Company.

The charge of Eight and 50-100 dollars ($8.50) as provided, adopted and made by the commission organized under authority of the laws of Idaho, to be made by the Consumers Company, for making service connections and furnishing all material and laying service pipes between the Company's main and Hatch's premises, is shown by the evidence in this cause to be the approximate cost of the service connection demanded. (Trans. pg. 59).

It is our contention that the service pipe is no part of the system which the Company by accepting the franchise from the city of Coeur d'Alene, contracted to install and that the service

pipe and connection demanded in this cause is for the sole benefit of Hatch and that the public is in no way interested and receives no benefit from the service connection made by the Company for the individual. That the service pipe between Hatch's premises and the Company's main and the tapping of the main for the purpose of serving Hatch's premises in no way enhances the value of the Company's system, but on the contrary is a source of danger and expense to it and an additional burden upon its system.

The law is well settled to the effect that, if the Consumers Company, is compelled to expend for Hatch the sum of Eight and 50-100 dollars ($8.50) and, if we concede for the purpose of this argument that said amount is a charge against the Company and must be paid by the Company, then the Company is entitled to have the said amount considered as an investment and is entitled to its revenue and interest and earnings on the investment thus made, but in this action, it has been shown that the commission established under the authority of the laws of the State of Idaho, fixed a charge of Eight and 50-100 dollars ($8.50) for making the connection and authorized the Company to collect that amount from the consumer demanding service and it further appears that said amount was not figured as a part of the

investment of the Company, but was considered by the commission as a charge to be paid by the consumer.

The order of the Supreme Court compels the Company to install at its own expense the service connection and service pipe and allows no compensation for the same. The court has therefore, compelled the Company to furnish water and make payments for the sole use and benefit of Hatch from which it receives no revenue or upon which it is not allowed to earn interest and has also compelled the Company to make investments on which it receives no return.

It can be readily seen that if this Company is compelled to pay the charge of Eight and 50-100 dollars ($8.50) for the service connection claimed by Hatch and after such payment can only receive and collect One and 50-100 dollars ($1.50) for water furnished for one month, that the Company is being deprived of Eight and 50-100 dollars ($8.50) for the services so rendered, for it has been determined by the commission under authority of the laws of the state of Idaho, that the Company will only receive just compensation for the water furnished for one month when it has received One and 50-100 dollars ($1.50) and said amount or no part of the same, can be considered as interest or earnings on the Eight and 50-100 dollars ($8.50)

which the court compels the company to expend.

If the commission had figured the Eight and 50-100 ($8.50) as an investment for the Company, then the rates must have been higher for water for domestic purposes in order that the Company receive just compensation for the money invested.

We submit that there is no foundation in law for the conclusion that the Consumers Company, is compelled to lay service pipes and make service connections at its own expense for Hatch, and that a reasonable regulation requiring all applicants for water to pay for the service connection and for the service pipes, is a proper regulation.

It is conceded that the public have an interest in the water distributing system of the Company and under authority of the statute laws of the State of Idaho, a right in the manner provided by law, to establish and determine the rates to be charged for water for domestic and family uses. The public is interested in the water distributing system. We cannot see where the public has any interest in the service connection or service pipe, when the service ceases to be for the general public and is serving Hatch; for the service is not public, but is private and from then on, the public has no control over the affairs between the Company and the individual, except over the com-

modity in which the public is interested in establishing and determining the rates to be charged for the public service.

We can see no reason which may be urged against this rule, for why should not the person with a valuable lot on a paved street, where it will cost a large sum for making service connection with the Company's mains, pay for the connection and why should the man who owns a lot on an ungraded street, of much less value, where the cost of making service connection is much less be required to assist the other property owner with a valuable lot, pay for the service connection.

If counsel for Hatch are correct in their view and each of these items must be added to the investment made by the Company, and is a legal charge against the Company, then as we said before, the Company must have its revenue and return on the amount invested and the man located on an unpaved street and on a street where the cost of connections are not so expensive must assist in paying the cost of service connections of the person who is located on a paved street, where the service connections are much more expensive.

Again we contend and submit, that the service connection is of great benefit to the property of the individual; it is an asset to his property

which he may use at any and all times. While it is true that the Company derives a great part of its revenue through the service connection, it is also true, that the service connection may be made and the party use the same for one month and then discontinue the service and the Company would only receive, if counsel's contention is true, One and 50-100 dollars ($1.50) for which it was compelled to expend Ten dollars ($10.00), for this record shows that the water furnished for the first month was reasonably worth at least One and fifty one-hundredths dollars ($1.50), but the Company has been compelled by the order of the Supreme Court, not only to furnish water for one month, but to incur an expenditure for the sole benefit of Hatch of an additional sum of Eight and 50-100 dollars ($8.50), in order that it may have the privilege of charging him One and 50-100 dollars ($1.50) for one month's water rent.

We conceive of no reason why Hatch should not be compelled to pay for the service pipe and service connection, connecting the Company's mains with his premises. If he ceases to use the service, then he loses his connection and it should be so, for the Company by reason of being a public service corporation, should not be compelled to donate or contribute to him.

If at times his property may not be rented,

still the connections have been made; while the Company derives no benfit whatever from the connection, it is a benefit to his property; it assists him to rent his property and the connection and service pipe is an asset to his property.

"A rule of a water corporation, requiring a consumer to repair service pipes leading from its main in the street to the property of the consumer, and assented to by him and made a part of his contract, is valid, the franchise giving power to make such rule."

McClaugherty v. Bluefield Water Wks. & Imp. Co., 68 S. E., 28 (W. Va.).

It was contended by counsel as one of the reasons why the writ should be granted, that the property owner had no right in the street and would not be authorized to lay pipes in the street. On this subject, the honorable Judge in the case of McClaugherty v. Bluefield Water Works & Improvement Co., Supra, makes the following comment:

"It is argued that the duty of repairing the connecting pipes rests on the company from the consideration that the individual would not have the right to dig up the street to lay his pipe without the city's permission. We cannot accede to this position. The grant of the franchise necessarily means that the Company could dig up the

streets for connecting pipes or that the consumer contracting with it for water could do so under the privilege accorded to the Company. When the Company contracts with the consumer to furnish water, that alone implies that the Company makes the consumer its agent to lay the service pipe and gives him authority to do so, lest the franchise would be practically worthless.'

On this same subject, Dillon on municipal corporations, Section 56, says:

"That the abutting owner has a right of passage and also rights not shared in by the public at large. Special and peculiar to himself and which arose out of the very relation to his lot, to the street in front of it and that these rights were rights of property ———— in cities the abutting owners' property is especially dependent upon sewers, gas and water connections."

"When the Company has laid its mains along the street where the city could connect and use the water free of charge its obligations to the city was discharged and the city must pay the cost in laying service pipes and connecting with the water mains of the company."

Venton Roanoke Co., v. City of Roanoke (Va.) 66 S. E. 835.

"The service pipes were the property of the lot owners, not of the corporation. Such corpora-

tion paid for the privilege of controlling the matter of connecting service pipes with mains by doing the work when needed at reasonable cost or permitting the property owner to have it done by some other agency. The mere existence of service pipes was of no benefit to the corporation, but was rather an element of danger."

Gleeson v. Waukesha (Wis.) 79 N. W. 249.

In Allentown v. Henry, 73 Pa. St., 404, "A law authorizing local assessments for water pipes was challenged as unconstitutional because the benefit of such improvements were all general, but the court held, that the benefits were chiefly local, as the use of the water was localized as to each parcel of the abutting property and the effect of laying the water pipes was to enhance the value of the property."

In Allen v. Drew, 44 Vt. 174, "It was held substantially that there is no difference between a local assessment for a sidewalk and one for a sewer or water service; that each in a degree benefitted the public generally, but the local property particularly, because of its enhanced value from the improvements; that public interest justifies public control as to time of making such improvements and the local benefit justifies the local assessment to pay the cost thereby incurred and that the question of whether the property charged

is occupied or vacant, is immaterial."

The Supreme Court of the State of Washington, in a comparatively recent case, Foley v. Hillyard Water Co., 94 Pac. 1080, in determining that it is the duty of the property owner to pay for service connections, makes the following statement on the subject: "Where a consumer owned a house in a certain street, which house was supplied with water by a private main running through that street, but the service was unsatisfactory and he together with others living on the street, petitioned a defendant water company to extend its mains along another street so that they could be supplied with water and the defendant water company subsequently purchased the said private main with which plaintiff's house was connected and operated it for a short time and abandoned it as unfit for use and the remainder of those petitioning defendant to extend its main, paid the cost of connecting with the extension, but said consumer refused to do so, insisting the defendant should supply him with water through the abandoned main, it was held, that the consumer not having been entitled to compel the owner of the private main to supply him with water and he having petitioned defendant to extend its main could not compel the water company to continue the old main or furnish water through the

new main without paying for connecting his property with it."

So in the State of Ohio, in the case of Jonas v. City of Cincinnati, 18 Ohio 318, and Creighton v. Scott, 14 Ohio St., 438, Lot Assessment for gas construction was sustained.

In the recent case, ex parte, Goodrich, (Cal.) 117 Pac. 451, holds, that an ordinance attempting to impose on a lighting corporation the burden of furnishing, installing or renewing any carbon filament, incandescent lights of eight or more candle power without making any charge or without demanding any payment or deposit therefor, would impose a duty upon said corporation which did not pertain to their public functions and was invalid as a confiscation of property without due process of law.

II.

It will be very readily seen, from a careful reading of Section Ten of the franchise and contract, between the city of Coeur d'Alene and the Consumers Company, that it was the intention of the parties to lay certain mains and laterals along certain streets, the streets being designated and the ordinance granting to the company the privilege of laying its mains and laterals on such other streets as it might deem advisable and the said ordinance, franchise and contract in no place men-

tions service connections and Hatch's contention that under the franchise the Company is compelled to furnish service connections free of charge is excluded by the very language of the ordinance where it is specifically provided that certain mains and laterals should be laid by the company. If it had been the intention of the city that the Company should lay service connections for the individual, connecting the mains with individuals' property, it would have been expressly stipulated in said ordinance, but since it was not so expressed, we must conclude that it was not the intention of the parties. The Consumers Company, having complied with and conformed to all of the provisions of its contract with the city of Coeur d'Alene, the Supreme Court cannot by its judgment and proceedings compel the Company to do more.

Again we find by reference to the last paragraph of Section ten, that it is expressly stipulated that the Company will not be required to extend its distributing system of mains, pipes, laterals and other facilities along any ungraded streets or alleys of said village (now city) of Coeur d'Alene and Hatch's premises being located on an ungraded street, the judgment and proceedings of the Supreme Court, in compelling the Consumers Company, to extend and lay its distribut-

ing system of mains, pipes, laterals and other facilities on and along Third street, violates the provisions of the Company's contract with the city of Coeur d'Alene and impairs the obligations of said contract in violation of the constitution of the United States.

This Court in the case of the U. S. v. Muskateen, 75 U. S. 575, held, that the obligations of a contract were impaired by judicial decision. Honorable Justice Swayne, speaking for the Court, uses the following language:

"We are of the opinion that under the statuts of in force when the contract was made, the relator is entitled to the remedy he asks and that this right can no more be taken away by subsequent judicial decision than by subsequent legislation. It is as much within the sphere of our power and duties to protect the contract from the former as from the latter and we are no more concluded by one than the other."

We respectfully submit:

I.

That the judgment and proceedings of the Supreme Court of the State of Idaho, deprives the Consumers Company, of its property without due process of law in violation of the constitution of the United States.

II.

That the judgment and proceedings of the Supreme Court of the State of Idaho, violates plaintiff's contract with the City of Coeur d'Alene, and impairs the obligations of said contract in violation of the constitution of the United States.

The judgment of the Supreme Court of the State of Idaho should be reversed, set aside and held for naught and judgment rendered for the plaintiff in error, granting to it its rights under the statutes and laws of the United States.

MYRON A. FOLSOM,
EDWARD S. ELDER,
ROBERT H. ELDER,
Attorneys for Plaintiff in Error.

IN THE

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1911.

CONSUMERS COMPANY, LIMITED,
PLAINTIFF IN ERROR,
vs.
ALBERT L. HATCH,
DEFENDANT IN ERROR.

No. 184.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IDAHO

REPLY BRIEF OF PLAINTIFF IN ERROR.

MYRON A. FOLSOM,
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We will reply briefly to the argument of counsel for respondent as presented in their brief.

I. JURISDICTION OF THIS COURT. DUE PROCESS OF LAW.

The question whether a public service corporation can be legally coerced to expend its own money for the sole benefit of a private individual without compensation certainly presents a question under the Fourteenth Amendment to the Federal Constitution. The question was raised in the State Court and decided by that Court adversely to plaintiff in error.

In Missouri Pacific Ry. Co. vs. State of Nebraska, 164 U. S., 403, this Court reviewed upon writ of error a judgment awarding a writ mandamus to compel a Railway Company to grant to one Hollenbeck the right to erect an elevator on the land of the Railway Company. This Court said:

"The order in question so far as it required the railroad Corporation to surrender a part of its land to the petitioners, for the purpose of building and maintaining their elevator upon it, was in essence and effect a taking of private property of the railroad corporation for the private use of the petitioners. The taking by the State of the private property of one person or corporation without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Amendment of the Constitution of the United States."

In the case at bar, the Supreme Court of Idaho granted a writ of mandamus to compel the Water Company to expend $8.50 of its own money to extend a private lateral from a water main to the property of Hatch, upon the payment by Hatch of the established rate for furnishing water for one month, i. e., $1.50.

Counsel for respondent contends that the Water Company's property was taken by due process because the Water Company was allowed to appear in the mandamus proceeding.

But as said by this Court:

"Due process of law as applied to judicial proceedings instituted for the taking of private property for public use means, therefore, such process as recognizes the right of the owner to be compensated if his property be wrested from him and transferred to the public. The mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law, if the necessary result is to deprive him of his property without compensation."

Chicago B. & Q. Ry. Co. vs. Chicago, 166 U. S., 226.

In Missouri vs. Nebraska, 217 U. S., 205, this Court held that a railroad company's property was taken without due process of law where the company was ordered by the Court to build at its own expense side tracks to reach a private grain elevator, "whatever may be the speculations "as to the ultimate return for the outlay."

In the case at bar, the record shows that consumers were allowed to take and carry water from public and other faucets for $1.50 per month (p. 60), and that Hatch had carried water taken from the Company's main for more than fifteen months and had incurred a bill of $23.50, which he refused to pay. (Rec., pp. 47, 62.)

It should be observed that the Water Company did not refuse to make the connection and extend the private pipe to Hatch's property. It offered to make the private tap and extension to Hatch's property upon the same terms which the Company by rule had imposed upon other consumers, to-wit:

First: It offered to make the connection provided Hatch would pay the Company $8.50, which was the approximate cost thereof; or

Second: It offered to make the connection upon the deposit by Hatch of $15.00, which amount, less the actual cost of labor and material, would be refunded when the tap should be taken out; or

Third: It offered to make the connection free of charge upon the payment by Hatch of $40.00, the said amount to be applied in payment of water used from this tap. (Hatch's testimony, p. 33.)

The question before the Court is not whether the Court can compel the Company to make a private connection for

Hatch; but is whether Hatch can compel the Company to make a *private connection for him without any compensation for the labor and material used.*

It should be noticed that the Company's system is weakened by each connection made and the burden and expense of maintenance of the extension is imposed upon the Company; and where the street is ungraded at the time of installation, the service connections may have to be lowered when the grading is done.

The Supreme Court of Idaho held, and counsel for respondent argue that it would not be a confiscation to require the Water Company to install the private connection with Hatch's property:

(1) because the private connection and pipe is a part of the system;

(2) because the Company would secure an additional revenue of $1.50 per month, or $18.00 per year, upon an investment of of $8.50.

But when we examine these reasons in the light of the decision in Missouri Ry. Co. vs. Nebraska, 217 U. S., 205, and in the light of the facts in this case, it will readily be seen that both reasons are unsound.

It cannot be seriously contended that the private connection is of any more benefit to the public than a private spur

or switch to reach a private elevator. A private tap is a burden upon the water system and weakens the entire system. This Court has held that a private spur or switch, while technically a part of the system, is not of such a public use that the railroad company can be compelled to install it at *its own expense.*

The second reason assigned is equally unsound. In the first place, the record shows that it would cost the Company $1.50 per month to pump the water to Hatch's house and make collections. (Rec., p. 60.) So that no profit whatever would result to the Company, even though Hatch should pay for the connection. In the second place the Water Commission found that $1.50 per month was no more than the cost, interest on the plant investment, and a reasonable profit for furnishing water at any place within the city, and this exclusive of the cost of taps, which were allowed to be charged for. In the third place, Hatch might take water for one month and then vacate his house and fail to lease it, or he might refuse to pay for water, as he has in the past, or the house might burn, and the Company would have no revenue whatever. In any event, as said by this Court, in Missouri Ry. Co. vs. Nebraska, *supra:*

"To require the Company to incur this expense unquestionably does take its property *whatever may be the speculation as to the ultimate return for the outlay.*"

And again, in the same case, this Court said:

"Why should the railroads pay for what, after all, are private connections? We see no reason."

The foregoing statements are clearly applicable to the case at bar. To compel the Water Company to make private connections with its mains and laterals at its own expense is clearly a confiscation of its property.

This is particularly true in a case like the one at bar, where the franchise defined certain streets upon which the Company was required to lay mains and extend laterals and expressly provided that the laying of other mains or other laterals should be permitted, but not compelled. Because the Company did lay a main in the ungraded street in front of Hatch's house, is no reason why the Company should be compelled to extend private laterals at its own expense in such ungraded street, and later be required to lower such laterals, particularly when the ordinances provided that the Company should not be required to lay such a main, *or* construct any lateral from it.

II. IMPAIRMENT OF THE CONTRACT.

We will pass to a consideration of other suggestions made by respondent's counsel.

It is insisted that a similar statute to the one construed and applied by the Supreme Court of Idaho, was construed by that Court prior to the granting of the franchise to this Company.

To that suggestion we reply that the statute here applied was admittedly not passed until 1907 and the franchise was granted in 1903. This act of 1907, embodied in the Revised Codes of 1910 as Section 2839, is one of which we complain. We are not interested in the old act of 1887, or its construction. The new statute superseded the old.

The case of Pocatello Water Company vs. Stanley, 7 Idaho, 155, is not in point. It contains this statement:

"The only question before us on this appeal is: Has the Company the sole right to tap its mains and laterals whenever that is necessary to be done to furnish private citizens with water? We answer that question in the affirmative."

Anything which the Court said in the opinion beyond the question presented was purely obiter. No Court was bound by it.

The City of Coeur d'Alene, Idaho, expressly provided in the franchise that no mains *or* laterals were required to be laid in ungraded streets. The Company has refused to extend a private lateral. The Supreme Court, applying an act passed in 1907 (four years after the franchise was granted), has impaired the contract by ordering the Company to do that which its contract with the city provides that it need not do.

The case of Bothwell vs. Consumers Company, 13 Idaho, 568, was abandoned by plaintiff after the Idaho Court's decision, and the defendant, not having been injured, did not appeal to this Court from that decision.

It is not true that "plaintiff in error placed the same "construction upon its franchise for more than a year after "the acceptance," as is adopted by the Idaho Courts. The Water Company commenced business as a competing Company and, for the purpose of getting business, for a time voluntarily put in free taps and connections. Railway Companies frequently do this with reference to spur tracks, but their action is not an admission that the law compels them to do so.

Whether the Water Commission had the right to provide that the consumer should pay for taps and connections, or whether its powers were limited to regulating the charges for water, is immaterial. The rights of the Water Company to the protection of the Constitution of the United States is complete whether the Water Commission had or had not the power to recognize and sanction such rights.

In conclusion, we again call the Court's attention to the fact that the Water Company is not charged with refusing to furnish water through public hydrants; neither is it charged with refusing to make private connections with private consumers. *The Company has offered to make a private connection at the expense of the private person who alone will be benefited.* But it claims the protection of the Constitutional Amendments against being compelled by the Idaho Courts to expend its money for the sole benefit of a private individual without receiving any compensation therefor.

It has become popular to justify any violation of the property rights of a Corporation by the plea of regulation under the police power. But surely the Fourteenth Amendment has not become obsolete.

Respectfully submitted,

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Counsel for Plaintiff in Error.

BRIEF OF DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

NO. 184.

CONSUMERS COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

ALBERT L. HATCH, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IDAHO.

This was an original action in the Supreme Court of the State of Idaho, praying for a writ of mandate to compel the Consumers Company to abide by the terms of its franchise with the city of Coeur d'Alene and to furnish defendant in error water for domestic purposes, at the regular established rates, without compelling defendant in error to pay the costs of constructing a portion of plaintiff's in error system of water works, to-wit, service connections between plaintiff's in error pipe line in the street and defendant's in error property line. The Supreme Court on November 9, 1909, issued the writ.

On October, 19, 1903, the then Village of Coeur d'Alene granted franchise to the Consumer's Company to furnish water to the city of Coeur d'Alene and its inhabitants.

Section Two of said franchise is as follows:

"That said Consumers Company, its successors and assigns, are hereby granted the right to lay and maintain along any and all of the streets and alleys of said village, within the limits of said village, as such limits now exist or may hereafter be extended, water mains, pipes, laterals, connections, fittings, and all other faciiities for conveying, distributing and carrying water and also pipes, tiling and other facilities for carrying off and discharging water from water motors, water sheels and other devices wherein water may be used for power or other purposes." (Transcript, page 19).

Section Three is as follows:

"Said Consumers Company, its successors and assigns, shall be entitled to charge and receive for water furnished for domestic purposes such rates as may be agreed by the inhabitants of said village and said Consumers Company, or its successors or assigns, or such rates as may be fixed by the the Water Commission provided by law; and to charge and receive for water used for power and purposes other than domestic uses, such rates as such Consumers Company may establish." (Transcript, page 19).

It is admitted in the answer that plaintiff in error had its water main laid on what is known as Third Street in front of the property of defendant in error. (Transcript, page 10), and that plaintiff in error was, at the time of filing said petition, supplying the inhabitants on Third Street with water from its main laid in said street; (Transcript, page 33); that plaintiff in error began operating its system in Coeur d'Alene, December 1, 1903, and began charging for taps, May 15, 1905; that they continued to make free taps for practically a year and a half after they had exclusive control of all the water systems in Coeur d'Alene. Transcript, page 88).

It appears further that on August 14, 1907, the Commission appointed, in accordance with the provision of Section 2839 of the Revised Codes of the State of Idaho, fixed rates to be charged for water and in addition thereto attempted to impose charges for making connections. (Transcript, page 43).

Mr. Sullivan, a commissioner appointed by the city,

stated that in his opinion the commission had no authority; that, if they had no authority, it didn't make any difference whether they put it in or not. (Transcript, page 100).

The Commissioners generally opposed the charge for taps, being advised by R. T. Morgan, one of the commissioners representing the Consumers Company, that the Commission had no authority to fix rates or charges for taps. (Transcript, page 102).

It further appears that the entire schedule of rates was submitted to the Commission by the Consumers Company, and that was all of the evidence considered by the Commission in fixing the so-called rates and charges (Bodler's Testimony, Transcript, page 105).

Questions Before the Court.

1. Is there such a federal question involved in this case as to invoke the jurisdiction of this court, and if so,

2. Has plaintiff in error been deprived of any of its rights by being required to abide by the terms of its franchise with the city.

3. Is plaintiff in error being deprived of its property without due process of law by requiring it to complete its system so as to supply the inhabitants of Coeur d'Alene with water for domestic purposes.

We will proceed to discuss the questions in the order indicated.

Is There a Federal Question Involved?

At the outset of this case we are confronted with the question of jurisdiction. Plaintiff in error contends:

1. That its property is being confiscated; that the proceedings of the Supreme Court of the State of Idaho were in violation of plaintiff's rights as defined by Article 14, Section 1 of the Amendments to the Constitution of the United States and that plaintiff in error is being deprived of its property without due process of law.

2. That sections 2839, 2840 of the Idaho Revised Codes, as given effect by the judgment and proceedings of said Supreme Court of Idaho, impaired the obligation of a contract entered into between the city of Coeur d'Alene and the plaintiff in error in violation of Section 10, Article 1 of the Constitution of the United States.

Jurisdiction.

We will discuss these questions from a jurisdictional standpoint before proceeding to the merits of the case.

Referring to Section I of Article 14 of the Amendments, upon which plaintiff in error relies, we find that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of law."

It has long been the holding of this court that in order to warrant the exercise of jurisdiction over the judgment of State Courts there must be something more than a mere claim that a federal question exists. There must, in addition to the simple setting up of the claim, be some color therefor or in other words the claim must be of such a character that its mere mention does not show it destitute of merit. There must be some fair ground for asserting its existence, and in the absence thereof a writ of error will be dismissed, although a claim of a federal question was plainly set up.

Melligan vs. *Hartupes*, 6 Wall 258, 18 L. Ed. 829.
New Orleans vs. *New Orleans Wat Co.*, 142 U. S. 79.

In the latter case the Court said:

"There must be a substantial question on which the case may be made to turn."

See also *Wilson* vs. *North Carolina*, 169 U. S. 586, 42 L. Ed. 865, in which it was held:

"That there must be a real and substantial federal question existing in order to give this court jurisdiction to review a judgment of a State Court."

The foregoing cases have all been approved in *New Orleans Water Works Company* vs. *Louisiana*, 185 U. S. 336, 46 L. Ed. 936.

The claim that the judgment complained of deprives plaintiff in error of property without due process of law must be looked at with reference to the cases upon the subject as to what constitutes due process of law.

Simon vs. *Craft*, 182 U. S. 427, 45 L. Ed. 1165.

In that case it was held that the essential elements of due process of law were notice and an opportunity to defend, and in determining whether those rights were denied the court will be governed by the substance or things and not by mere form, and the due process clause in the 14th amendment of the Constitution would not necessitate that the proceedings in a State Court should be by a particular mode but only that there should be a regular course of proceeding in which notice was given of the claim asserted and opportunity offered to defend against it. There is no question of plaintiff in error having been deprived of a right to appear in court to answer the charge and to defend against it in this case as the record before your Honors substantially indicates.

We must conclude then that plaintiff in error is not being deprived of his property without due process of law.

The next question raised by counsel for plaintiff in error is that Section 2839 and 2840 of the Revised Codes of Idaho, as construed by the Supreme Court, impaired the obligations of a contract entered into between the city of Coeur d'Alene and plaintiff in error in violation of Section 10, Article 1 of the Constitution of the United States.

Section 2712 of the Revised Statutes of Idaho, 1887, is as follows:

"Any corporation created under the provisions of this Title for the purposes named in this chapter, subject to the reasonable direction of the Board of County Commissioners, or city or town authorities, as to the mode and manner of using such right of way, may use so much of the streets, ways and alleys in any town, city or county, or any public road therein, as may be necessary for laying pipes for conducting water into any such town or city, or through or into any part thereof."

Construing this section the Court, in the case of *Pocatello Water Company* vs. *Stanley*, 7 Idaho 155, 61 Pac. 518, on May 24, 1900 and more than three years prior to the granting of the franchise to plaintiff in error said:

"When the company undertook the performance of this public duty, it devoted its property, including its

mains and laterals, to a public use; and, while it will be permitted to control and use its property for the purposes contemplated, it cannot refuse to connect its mains with the water pipe of the citizen needing water, or dictate to the citizen who shall lay the necessary pipes on his own private premises. The only question, however, before us on this appeal is, has the company the sole right to tap its mains and laterals whenever that is necessary to be done to furnish private citizens with water? We answer that question in the affirmative. * * * It cannot compel the user of water to pay for such work or pipes, but it may require him to pay a reasonable compensation for furnishing him the water. In other words, the company cannot compel the citizen to pay for a part of the system of waterworks it has agreed to construct, but it must construct its own system within its franchise limits, at its own expense."

This same section, as slightly amended in 1905, was reenacted in Revised Codes of Idaho as Section 2840, which is as follows:

"Any corporation created under the provisions of this title for the purposes named in this chapter, subject to the reasonable rules and directions of the city or town authorities as to the mode or manner of using such right of way within the city or town, and subject to the reasonable rules and directions of the board of county commissioners as to the mode and manner of using any right of way outside the corporate limits of such city or town, may use so much of the streets, alleys and ways in any city or town, or the public roads and highways within the county, as may be necessary for the laying of pipes for conducting water to its consumers, or the building and maintaining of ditches, canals, pipes, flumes and acqueducts in conducting water from ouside points to the corporate limits of said city or town."

This, as it will readily be understood by the court is not amended in any manner as to substance so far as cities and villages are concerned and the law is, for all intents and purposes of this case, identically the same as it was prior to the granting of the franchise.

In *New Orleans Water Company* vs. *Louisiana,* 158 U.

S., 336, 46 L. Ed. 937, and particularly at page 943, the Court said, regarding the impairment of any alleged contract:

"It must be borne in mind that the constitutional provision refers to State Legislation or to an enactment of a legislative character though by a municipal corporation, made subsequent to the contract, and which impairs its obligation."

Citing *New Orleans* vs. *La. Sugar Refining Co.*, 125 U. S. 18, 31 L. Ed. 607, *St. Paul Gas Light Co.* vs. *St. Paul*, 181 U. S. 142, 45 L. Ed. 788.

It is further held in the New Orleans case that:

"This Court does not obtain jurisdiction to review a judgment of a State Court because that judgment impairs or fails to give effect to a contract. The State Court must give effect to some subsequent statute or state constitution which impairs the obligation of the contract and the judgment of that court must rest on the Statute either expressly or by necessary implication."

Citing *Mississippi & M. R. Co.*, vs. *Rock*, 4 Wall 177, 18 L. Ed. 381. *Mississippi & M. R. Co.*, vs. *McClure*, 10 Wall 379, 20 L. Ed. 414.

This question was fully discussed in the case of *Lehi Water Company*, plaintiff in error, vs. *Easton*, 121 U. S. 338, 30 L. Ed. 1059, where the question of a statute passed in 1867 was being considered inconnection with the privilege granted the plaintiff in error's company under statute of 1874. The Court in passing on the question said:

"The only question presented by the record which this court can properly consider is whether the judgment below denies to the plaintiff in error any right or privilege secured by that provision of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of a contract. Obviously this clause cannot be invoked for the reversal of the judgment below. It is equally clear that the laws of the State to which the Constitution refers in that clause must be one enacted after the making of the contract."

Continuing further the Court said:

"The argument in behalf of the company seems to rest upon the general idea that this court under the statutes defining its appellate jurisdiction may re-examine the judgment of the State Court in every case involving the enforcement of a contract. But this view is unsound. The State Court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it. It may hold a contract void which, in our opinion, is valid. It may adjudge a contract to be valid which, in our opinion is void, or its interpretation of the contract may, in our opinion, be radically wrong, but in neither of such cases would the judgment be reviewable by this court under the clause of the Constitution protecting the obligation of contracts against impairment by State Legislation, and, under the existing statutes defining and regulating its jurisdiction, unless that judgment by terms or necessary operation gives effect to some provision of the State Constitution or some Legislative enactment of the State which is claimed by the unsuccessful party to impair the obligation of the particular contract in question."

Section 2711 of the Revised Statutes of Idaho, as amended in 1905 and 1907, was reenacted as Section 2839 of the Revised Codes of Idaho. The amendments however did not go to the substance, but merely the form of procedure. We therefore contend that the proceedings in the State Court did not in any manner impair the obligation of any contract between plaintiff in error and the city of Coeur d'Alene or the state.

This Statute, Section 2712 of the Revised Statutes of 1887, as amended and reenacted as Section 2840 of the Revised Codes of Idaho, had been construed as to substance more than three years prior to the granting of the franchise and the duty of plaintiff in error was clearly defined under the law, the law having been so clearly settled prior to the granting of the franchise to the Consumers Company, and there being no provision in the franchise requiring consumers to make the connection or pay therefore, it must be presumed that it was not the intention of neither the authorities of the Village of Coeur d'Alene nor the plaintiff in error to require con-

sumers to make connections, particularly in view of the fact that the plaintiff in error did not make such requirement for practically a year and a half after the granting of the franchise. This leads us to the conclusion that not only has the contract not been impaired but the same is being given effect according to the intention of the parties at the time the franchise was granted.

The Case Properly Decided by the Court of Idaho

Defendant in error contends that there is no such federal question involved as will warrant invoking the jurisdiction of this Court, but if by any chance this Court should decide that there is a possible federal question before it, then defendant in error contends that said question was properly decided by the Court of Idaho.

The Consumers Company, Limited, is a creature of the State of Idaho and should be subject to the laws of Idaho the same as any other person or individual, and its acts should be and are subject to supervision and control by the law of the State as construed and given effect by the Courts of the State.

As has already been indicated the Consumers Company in accepting the franchise from Coeur d'Alene entered into a contract, which said contract must be construed in the light of the terms of the entire franchise, and in view of the well settled law of the State, and inasmuch as the law with reference to the question here involved had been settled in the State long prior to the time of the granting of the franchise to plaintiff in error it cannot with good grace question the very law under which it exists. The franchise when granted was evidently drawn with care and looking to the protection of the rights and interests of the Consumers Company and must be construed in the light of the entire instrument and resort must be had to the whole of the ordinance in order to ascertain the intention of the parties with respect to the subject matter.

Vinton-Roanoke Water Co. vs. *City of Roanoke* (Va.) 66 S. E. 835.

According to the terms of the franchise plaintiff in error must furnish water to the city without charge. (Transcript, page 19). It was very careful in that particular to provide that the connections so far as the city was concerned must be made at the city's expense. In

dealing with the consumer, however, who is required to pay for water, it was manifestly intended that no such burden should be placed on the consumer as nothing is said in tthe franchise that can be construed as requiring that the consumer dig in the street or pay for making the connection, and in view of the fact that rights of plaintiff in error were so guarded with reference to the city it is a conclusive presumption that the consumer would have been required by the terms of the franchise to make said connection or to pay therefor if the same had been in contemplation by the parties at the time plaintiff in error accepted the franchise. There is no question as to the rates fixed by the commission for furnishing water. Defendant in error tendered the regular monthly rate established by the commission for furnishing water to his premises; (Transcript, page 32), and that was all which the law required of defendant in error.

The Supreme Court of the State of Idaho has passed definitely upon the question involved in the case at bar on three different occasions.

Pocatello Water Co. vs. *Stanley,* Supra.
Bothwell vs. *Consumers Co.,* 13 Ida., 568; 92 Pac. 533
Hatch vs. Consumers Co., the case at bar, 17 Ida., 204, 104, Pac. 670.

Plaintiff in error fully realized the status of the law controling the question here involved and placed the same construction upon its franchise for a period of more than a year after the acceptance thereof as placed thereon by the Supreme Court of Idaho. Then, evidently conceiving the idea of increasing its revenue by an illegal and unauthorized charge, it adopted the rule which it proceeded to enforce from 1905 to 1907 without other authority, as appears from the record, then an arbitrary rule established by itself.

It appears further from the record herein that the Consumers Company dictated to the commission appointed what the findings should be.

Henry Bodler in his testimony, (Transcript, page 105) testified in response to questions, as follows:

Q. Was there any evidence submitted by either party as to the cost of furnishing water.

A. Yes, the Consumers Company furnished a statement there as to the costs and expenses, etc.

Q. That was all the evidence.

A. That is all as near as I can remember."

And again, Mr. Sullivan, in his evidence, on page 100, in response to questions, testified as follows, on cross examination:

Q. As a matter of fact, didn't you state that you considered the commission had no authority to fix that rate and it didn't make much difference whether you put it in or not, didn't you state that as your opinion.

A. Yes.

On re-direct examination, the same witness testified in response to the questions:

Q. You considered that that was something entirely within the Company's power to fix itself.

A. I don't know. I didn't think according to our instructions it was our duty.

Morgan, attorney and one of the commissioners appointed by the Consumers Company, on cross examination (Transcript, pages 101 and 102) testified as follows:

Q. You were personally opposed to that part of the rate, were you not; in other words, didn't you advise the commission of which you were a member that the commission had no authority—no right—to fix that particular rate for making service connections?

A. I think there was some discussion of the question as to whether the commissioners had the legal right to fix that rate.

Q. You expressed it as your opinion that it would not have, did you not?

A. My recollection is not very distinct as to what opinion I expressed; I do remember of my saying something to the other members of the commission about that point and I might have said it was my opinion that the commission had no legal authority to fix that rate; but the matter came before the commission as I remember and a discussion on one point of it was to the effect that we were there to fix all the rates and that we should fix this rate.

Q. Is your recollection concerning the matter as it was ten days ago on that subject.

A. I don't remember talking to you.

Q. At the time you certified to a copy of the Ordinance No. 99 and one other.

A. On this particular subject.

Q. Yes, this particular subject; didn't you state to me at that time that you knew you had no authority to fix the rate and so advised the other members of the commission?

A. I might have stated that it was my opinion; I didn't say that I knew.

Q. You stated that you told them that they had no authority in your opinion to fix these rates, didn't you?

A. I think I stated something to that effect."

Thus it flagrantly appears that the Consumers Company dictated the findings of the so-called commission, notwithstanding the fact that at least three of the members were personally opposed to dealing with the subject of connections at all and as it appears from the record that Robert H. Elder, the attorney of record for the Consumers Company was the other and fourth commissioner, a fair conclusion to be drawn from the facts therefore, is that the attempt to fix the so-called rate for tapping the main was in keeping with the dictatorial and oppressive policy of the Consumers Company, notwithstanding the established and settled law of the State of Idaho under which they were operating and notwithstnding that the Statute under which said commission was appointed authorized the commission to fix rates to be charged for water and for no other purpose.

The second paragraph of Section 2839 of the Revised Codes of Idaho provides:

"The rates to be *charged for water* must be determined by commissioners to be selected as follows."

Thus the only authority vested in the commission was to fix rates to be charged for water and not to set a price for extending the system of the Consumers Company so as to put them in a position to furnish water according to the terms of their franchise.

And in view of the settled law as laid down in the case of *Pocatello Water Company vs. Stanley, Supra,* no such construction could be placed on said Section 2839 as that contended for by plaintiff in error.

Counsel for plaintiff in error places great reliance upon the case of *McClaugherty* vs. *Bluefield Water Company,* (W. Va.) 68 S. E. 28. We submit that this case abso-

lutely supports our theory and our contention in the case at bar. In that case McClaugherty had contracted with the water company to keep their service connections in repair, and in view of the contract the Court there held that there having been nothing in the franchise requiring the company to make service connections that it was at liberty to contract. The Court, however, specifically says:

"It may be that in the absence of a contract the company would be called upon to lay and repair service pipes to the line of the consumer"

and the case was decided on the contract and not upon the duty of the water company regardless of the contract. The franchise of the Consumers Company, however, is much stronger in favor of the consumer as the plaintiff in error is required to lay and maintain along the streets and alleys of Coeur d'Alene all mains, pipes, laterals, connections, fittings and all othe facilities for the purpose of conveying, distributing and carrying water to the village of Coeur d'Alene and its inhabitants and if the franchise in the McClaugherty case had contained a clause similar to the one in Section Two of the franchise of the plaintiff in error we very much doubt that the holding of the McClaugherty case had been different, than that in the case of *Hatch* vs. *Consumers Company,* in the Supreme Court of the State of Idaho.

Another case upon which plaintiff in error relies is the case of the *Vinton-Roanoke Water Company* vs. *City of Roanoke,* (Va.), 66 S. E. 835. That case was decided after construing the franchise as a whole and it was there held that the franchise taken as a whole did not require the water company to connect the hydrants of the city and furnish water free of charge and in addition thereto pay the cost of making connections. The franchise in that case was similar in many respects with reference to city water which was to be furnished free of charge as the franchise in the case at bar.

Section Two of the *Vinton-Roanoke Water Company's* franchise clause provides:

"That the company shall furnish water free of charge to certain public buildings named therein, provided that the said company shall be put to no expense in construct-

ing and maintaining the pipes, tapping said company's mains, and the plugs necessary for this purpose."

Section Five of the plaintiff's in error franchise provides:

"That the Consumers Company, its successors and assigns shall at its or their expense install and maintain suitable tees and hydrant connections at such alternate street crossings as may be intersected by mains of four inches diameter or over, which may be designated by the trustees of said village and shall at the expense of said village and without unreasonable delay place, connect and maintain at such points such hydrants as may be desired by said village."

A very different case would arise if the city of Coeur d'Alene were attempting to compel the Consumers Company to tap its mains at its own expense and furnish water free for fire hydrants. This however is the case of Roanoke Water Company and was a proper construction placed on the franchise under the facts in that case.

Another case upon which plaintiff in error seems to place great reliance is the case of *Gleason* vs. *Waukesha County* (Wis.) 79 N. W. 249. That case was decided under a statute which provides that:

"Before a street is paved, the council shall pass resolutions requiring water, gas and sewer connections to be made at the expense of abutting owners."

And the Court said in the course of that opinion:

"As owners of public franchises the corporations were bound to allow connections to be made with the mains to serve all property fronting on the streets where the mains were located, but at the expense of the owners of such property. The franchise called for delivery of water and gas at suitable outlets on the mains in front of the property, not for delivery to the curb lines of lots."

A very different case from the case at bar, first, because of a statute requiring connections to be made before streets were paved at the expense of the lot owner, and, second, because the franchise of the company called for delivery of water and gas at suitable outlets on the mains

in front of the property, not for delivery at the curb line of lots.

It is contended by counsel for plaintiff in error that because it could not be compelled to extend its mains on ungraded streets that it could not be compelled to furnish water to consumers simply because it had exercised its option to extend mains on said ungraded streets; in other words, it is contended that the Consumers Company could enjoy the privileges of its franchise to dig and lay pipes in any of the streets of the city and use those pipes in any way which might suit its convenience for the benefit of one consumer and to the detriment of another or in any other arbitrary manner which it saw fit. This question, however was discussed in the case of *Haugen* vs. *Albina Light and Water Company,* (Ore.), reported in 28 Pacific 244, which was an action in mandamus brought by the plaintiff to compel the defendant company to furnish water from its mains in front of plaintiff's premises. Defendant had contracted with the owner of an addition whereby said owner should install a main running through a street in front of plaintiff's premises for the purpose of conducting water to said owner's addition, upon agreement that the defendant should not be allowed to use said pipe for any purpose without paying the owner of said addition the cost of laying and constructing said main. In that case the Court held that when the defendant entered upon and laid down its water mains in the streets in pursuance of the privileges granted by the ordinance it became bound to supply every abutter upon the street with water. It was there also contended that the ordinance did not impose the duty upon it to furnish water, but only if it did it must do so upon certain terms. The franchise "granted the right and privilege to lay pipes through the streets of the city of Albina, for the purpose of conducting water through the streets." The Court there held that the granting of the privilege and the accepting of the benefits thereof by the defendant company imposed the duty upon said defendant to furnish the water without discrimination and to all persons whose property abutted on defendant's mains. In other words, that a water company cannot exercise its option to lay pipes on un-

graded streets and enjoy such privileges without assuming the burden imposed by said franchise.

Plaintiff in error has called our attention to no adjudicated case, neither have we been able to find any where the water system was owned by private corporations and where no ordinance or statute was in force by the terms of which the consumer was compelled to pay for service connections where the Court held that the duty rested other than on the company enjoying the franchise, unless there were circumstances by which the consumer was estopped by conduct, from compelling the company to make the connection at its own expense. On the other hand the settled law of this State, according to the cases of *Pocatello Water Company* vs. *Stanley,* Supra, *Bothwell* vs. *Consumers,* Supra, *Hatch* vs. *Consumers Co.,* Supra, places the burden where it justly belongs upon the party enjoying the privilege of the franchise. Also in the case of *International Water Company* vs. *City of El Paso,* (Tex.) 112 S. W. 816, the Court said:

"Primarily the duty to furnish water to property owners on streets containing mains carried with it the duty to do and perform what was necessary to be done to place the company in a position to furnish the property with water. It could not do this without connecting to the property line."

This case emphatically holds to the same rule as laid down by the Supreme Court of Idaho.

In conclusion, we submit that plaintiff in error has not in any manner shown it is entitled to invoke the jurisdiction of this Court; that it cannot successfully contend that it has been deprived of its property without due process of law; that any contract it has entered into with the city has been impaired by the proceedings of the Supreme Court of Idaho in construing the laws of the said State, and, finally, that the case at bar was correctly decided upon the law and facts by said Supreme Court and that plaintiff's writ should be dismissed by this Court and that the judgment of the Supreme Court of

the State of Idaho should be affirmed with costs in favor of defendant in error.

Respectfully submitted,

FRANK W. REED,

EUGENE V. BOUGHTON,

Coeur d'Alene, Kootenai County, Idaho.

Attorneys for Defendant in Error.

Service of the foregoing brief of defendant in error admitted by the receipt and acceptance of a true copy thereof this_____day of_____, 19____

_____

Attorneys for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1911.

CONSUMERS COMPANY, Limited,
Plaintiff in Error,
vs.
ALBERT L. HATCH,
Defendant in Error.
} No. 184.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IDAHO.

SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR.

The reply brief filed by plaintiffs in error herein, and the possibility of counsel not being able to be present at the hearing for oral argument, in the opinion of counsel for defendant in error, calls for a brief and limited discussion of the matters discussed in said reply brief.

Jurisdiction of the Court.

We contend that there is no such federal question involved in this case as will invoke the jurisdiction of this Court principally for the reason that a decision of the case could very well be reached and the case properly and fully decided without consideration of the federal question attempted to be raised by plaintiff in error. The case necessarily involves the construction of the Consumers Company's franchise under the laws existing at the time the franchise was granted by the village of Coeur d'Alene.

If the Consumers Company accepted a franchise to operate in the streets of Coeur d'Alene under the laws existing at that time which had been construed by the State of Idaho so as to impose a burden of making service connections upon the recipient of the franchise, then it is immaterial whether or not making such connections imposes a loss upon the Consumers Company, because they are bound by the terms of their contract and were charged with notice of the existing laws at the time, in which case there can be no question of depriving the company of its property without due process of law.

Counsel for plaintiff in error cites and quotes from the case of Missouri Pacific Ry. Co. vs. State of Nebraska, 164 U. S., 403. This case is, in our opinion, not at all in point for the reason that defendant in error in that case sought to acquire some of the land of plaintiff in error for the purpose of erecting an elevator without any compensation being paid to plaintiff in error. That question is not involved in

this case for the reason that the railroad company was under no obligation to furnish a free site for an elevator to defendant in error; it was not organized for the purpose; its duties were not prescribed by franchise, and transporting grain was merely one of the elements or purposes for which the railroad company was organized, whereas, the Consumers Company was organized for the specific purpose of supplying water to the village of Coeur d'Alene and its inhabitants, and when it accepted the benefits granted by the franchise it also assumed the burdens. It was granted a valuable privilege of controlling streets for the purpose of laying pipes, etc., and it could not under the laws of Idaho use that privilege in an arbitrary and unauthorized manner, but if the privilege was accepted it was accepted upon the terms imposed by the franchise, to-wit: to complete its system so as to put it in a position to perform the duties imposed upon it.

The foregoing argument applies with nearly equal force to the case of Missouri Ry. Co. vs. Nebraska, 217 U. S., p. 205, cited and quoted from by plaintiff in error. We contend there is a vast difference between compelling a railroad company by mandamus to extend its side tracks and compelling the Consumers Company in this case to complete its system which it has by its franchise contracted to install and maintain. The railroad company was not organized, as stated before, for the purpose of transporting grain alone, but it was one of the duties which could be performed by the railroad company without constructing the additional side track.

The duty to supply Hatch with water could not be performed by plaintiff in error without the service connections, whereas the Railway Company could transport the grain with the facilities at hand. If the contentions of plaintiff in error were correct that a tap in its main was a burden upon its system and no benefit could be derived therefrom, it would not require a very complicated process of reasoning upon the part of the plaintiff in error to show that its entire system instead of being a profitable institution was a continual source of burden and expense to its owners, whereas, as a matter of fact it is common knowledge that a price of $1.50 per month for a single tap for furnishing water to a consumer is so much in excess of the amount usually received for such service that there can be no serious question as to the profit derived therefrom. The claim that it cost $1.50 per month to furnish water to consumers is so absurd when considered together with the record in this case that it really requires no comment. We refer to Record, page 75, and to the statement of counsel in objecting to a question of witness Harding on cross-examination, to-wit:

> "There is no question involved here as to whether or not the company is making a profit over and above. We admit it is making a profit."

And considering further the entire testimony of witness Harding, in which he persistently, consistently and studiously avoided any definite answers which would throw any light on the question of profits of the company.

The contention of plaintiff in error that Hatch might take water for one month, then vacate his house, or the house might burn, is so remote that it cannot be regarded as an element in the argument. Plaintiff in error is merely attempting to enter into the elements of adverse speculation for the purpose of his argument, and the mere fact that a house may burn is one of the incidents and dangers attending the construction and operation of such a system.

We maintain that requiring plaintiff in error to comply with the terms of its franchise is not a confiscation of its property and would not be even though plaintiff in error were required to spend money in addition to its income to such an extent that its entire capital would eventually be consumed. On the other hand, it is our contention that the evidence in this case so clearly established that no such dire calamity awaits the plaintiff in error that this Court has no jurisdiction to consider the case for the reason that it was decided, and properly decided upon a construction of its contract in the lower court, and we do not believe that plaintiff in error will seriously contend that said contract has in any way been impaired.

In construing Section 2712, Revised Statutes of Idaho, the Supreme Court, in the case of Pocatello Water Company vs. Stanley, 7 Idaho, 155; 61 Pac., 518, so clearly defined the duties of all companies, persons and corporations who accepted the privilege of using the streets, that it seems to us that no question could arise as to such duties, and surely with such a construction this Court has nothing to do

because the statute was passed and construed by the Supreme Court prior to the granting of the franchise in this case. The Court said in the last mentioned case:

> "Under the said franchise the respondent has been granted the right to lay its mains and pipes over, along, and under the streets, alleys, and highways of said city for the purpose of supplying said city and inhabitants with a sufficiency of pure water. It had the authority to lay all of the mains and pipes in said streets and alleys necessary to accomplish the purposes for which said franchise was granted. It is obliged to lay its mains and pipes in said streets and alleys and deliver water to consumers at its franchise limits and to the line of the premises of the consumer if such premises border on said franchise limits. The respondent has been granted a valuable right—that of laying its mains and laterals in the streets and alleys of the city—in consideration that it will furnish water to said city and its inhabitants. The company is under obligation to lay its pipes in the streets and alleys so as to make the water accessible to the citizen for his private use. It is given the right within its franchise limits to lay all pipes and make all connections with its mains and laterals. * * * Neither has the citizen any right to enter within the franchise limits of the company and in any manner interfere with its mains and pipes."

Thus the Supreme Court defined the duties of water corporations under the statute, and any franchise granting the rights and privileges of occupying the streets in the State of Idaho must necessarily be granted under the conditions imposed.

Moreover, there is no taking of plaintiff's in error property for public or other purpose. The laterals and connections are the property of plaintiff in error, over which they have absolute control, and over which defendant in error, nor any other consumer or person has any control whatever. On the other hand, if the position contended for by plaintiff in error could be maintained it would be taking the property of Hatch without due process of law and giving it to plaintiff in error. If Hatch were to be compelled to pay for a part of the system through which revenue were to be derived by plaintiff in error, then it would surely be depriving Hatch of a portion of his property for the benefit of plaintiff in error.

It is contended by defendant in error that all of the pipes, laterals and connections are a part of the system of the Consumers Company, over which it has absolute control, and was so held by the Supreme Court of the State, and has been so held by many other courts, including the Supreme Court of the United States. We refer particularly to the Washington Gas Company vs. District of Columbia, 161 U. S., 316, and particularly page 323, where the Court uses the following language:

> "It must therefore have necessarily been contemplated that such connections with the mains as were from their very nature incidental to and inseparably connected with the consumption of gas, should be a part of the Gas Company and under its control rather than under that of the city or the property owner. Indeed, the control by the Gas Com-

> pany of the connections for its mains to the point of use is as absolutely necessary to make it possible for such company to carry out the very purpose of its charter as are the retorts and mains. * * * The charter does not confer the power to lay pipes upon those desiring a supply of gas, but gives such power to the company."

In the same case the Court quotes approvingly from Commonwealth vs. Lowell Gaslight Company, 12 Allen, 75, as follows:

> "The mains or pipes laid down in the streets and elsewhere to distribute the gas among those who are to consume it were clearly a part of the apparatus necessary to be used by the corporation in order to accomplish the purpose for which it was established. They constituted a part of the machinery by means of which the corporate business was carried on."

We insist that the franchise should be construed according to its entirety and there being no provision by which the Consumers Company can charge for taps that any attempt to do so is a violation of its terms.

We particularly except to counsel's statement in their reply brief on page 9, in which they say:

> "It is not true that 'plaintiff in error placed the same construction upon its franchise for more than a year after the acceptance' as is adopted by the Idaho Courts. The Water Company commenced business as a compet-

ing company and, for the purpose of getting business, for a time voluntarily put in free taps and connections."

We refer the Court to the transcript of record, and Mr. Harding's testimony on cross-examination:

"Q. How many years have you been charging for taps?

A. Since May 15, 1905.

Q. They were not charging for taps when you went in there?

A. The old company charged for taps.

Q. I am asking for yours, my question.

A. For a while we had to put in taps gratis in order to get consumers from the old company who had all the consumers connected up with taps.

Q. You bought out the old company, did you not?

A. Not until after we had a little fight with them.

Q. When did you buy them out?

A. Some time in November, 1903, and we began operating our own system and their system on December 1st, 1903.

Q. You had to continue it a year and a half after you purchased their plant?

A. No.

Q. You did, didn't you?

A. We did."

We think this conclusively shows that it is true that plaintiff in error places the same construction on the franchise for a year and a half after it was the only company operating in the village.

In conclusion we repeat that in our opinion there is no such federal question involved as calls for or will warrant any consideration by this Court, be-

cause the case was properly decided on its merits without the consideration of any so-called federal question and there can be no taking of property without due process of law by requiring a corporation to live up to the laws of its existence and perform its duties according to the terms of its franchise.

Respectfully submitted,

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